UNIVERSITY OF PENNSYLVANIA

LOYALISM IN VIRGINIA

ISAAC SAMUEL HARRELL

A THESIS

IN HISTORY

PRESENTED TO THE FACULTY OF THE GRADUATE SCHOOL IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

PHILADELPHIA
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PREFACE

This study was begun with the view of determining the extent of loyalty to the British government in Virginia during the American Revolution. As the investigation proceeded the alignment between economic interests and political parties became evident, and, in the light of information derived from material hitherto unused, the study of Revolutionary politics has evolved into a monograph in economic history. The terms Loyalist and Patriot were political badges to designate men who were divided in their opinions; many factors contributed to this division,—social, political and economic. This study is an attempt to analyze only the economic factors. There is no inclination to minimize social and political aspects of the Revolution except in so far as the facts presented modify the emphasis. The constitutional controversy is a more or less familiar story, and it has not been deemed necessary to repeat it here.

The first chapter, an analysis of the economic conditions peculiar to Virginia in the decade preceding the Revolution, is necessary to what follows. The scarcity of fertile lands and the increase

in the price of these lands, coupled with the public and private indebtedness of the Virginia planters, explain in part the unanimity of the Revolutionary movement and the absence of loyalty to the king among the aristocratic planters. The second chapter is a study of the strength, organization, and activity of the loyalists in Virginia. The third, fourth, and fifth chapters treat of the punishment of the loyalists by the patriot government during the war, the period of the Confederation, and the years from the ratification of the Constitution to Jay's Treaty. Throughout emphasis is placed, not upon the constitutional and political aspects of loyalism, but upon the economic forces in Revolutionary Virginia.

This study was prepared during my tenure, in the years 1923-1924, of the George Leib Harrison fellowship in History in the University of Pennsylvania. It is a sincere pleasure to record my gratitude to Professor St. George L. Sioussat, of the University of Pennsylvania, for the guidance he has given me at every stage in the preparation of this study. I am under many obligations to Dean Herman V. Ames, of the University of Pennsylvania, whose kindness and encouragement have helped me in every way. I am indebted to Professor William K. Boyd, of Duke University, who first directed my interest to the Revolution

in the South. I wish to thank Professor William T. Laprade, of Duke University, and Professors McKinley and Nichols, of the University of Pennsylvania, who have read the manuscript. It is proper that I acknowledge the assistance rendered me by Mr. Morgan P. Robinson, of the Virginia State Library, and indirectly the aid of Dr. H. J. Eckenrode, through his study *The Revolution in Virginia.*

ISAAC S. HARRELL.

New York City.
June, 1926.

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LOYALISM IN VIRGINIA

CHAPTER I

ECONOMIC ANTECEDENTS OF THE REVOLUTION IN VIRGINIA

Despite the events of the preceding decade, in 1773 loyalism was the logical state of mind in Virginia; loyalism called for the maintenance of the long established social, religious, and political order. In religion, in social customs, in personal contact, Virginia, of all the colonies in North America, was most closely akin to the mother country. The English Church was established by law and supported with taxes. The landed gentry imitated the manners and tastes of the English nobility; they educated their sons at English universities and read the latest English books. The planters borrowed money from English brokers to operate their tobacco plantations and sold their products to English traders. If their depleted finances would permit, they made occasional visits to that mother country of which they were so proud. From Virginia, more than from any other colony, the English government expected loyalty. Yet a Virginian drafted the Declaration of Independence; another Virginian led the patriot armies in the field; and Virginia

furnished the model for state constitutions and bills of rights. "The influence of the Henrys, Lees and Washingtons, have overpowered other provinces and most fastly checked loyalty," wrote the British spy, Paul Wentworth, in his notes on political parties in America in 1778.[1]

This transition from loyalty to rebellion is attributed, in part, to the constitutional controversy between the colony and England. The exercise by the governor of his power to suspend colonial legislation caused continual inconvenience and hardship. The governor had not exercised this power in Virginia prior to 1729, and from that date until 1764 the suspending clause was added to fewer than sixty laws; from 1764 to 1773 this clause was added to seventy-five laws.[2] Several years frequently elapsed after the passage of a measure before any action was taken by the King, and then it might be disallowed or, else, approved with amendments that completely changed the intent of its framers.[3] Extra fees, especially the pistole fee on land grants, became a matter of great irritation to Virginians. Dissenters were increasingly numerous, and by 1774, according to

[1] B. F. Stevens, Manuscripts in British Archives Relating to America, 1773-1783, V. No. 487.

[2] P. S. Flippin, *The Royal Government in Virginia, 1624-1775*, p. 200.

[3] C. R. Lingley, *Transition in Virginia*, p. 24.

the estimate of Jefferson, they included more than half of the people in the colony. They were working in and out of the assembly for the disestablishment of the Church.[4] The theory rapidly developed in Virginia that no outside authority should legislate on the internal affairs of the colony.

In Virginia the House of Burgesses led the Revolution in its inceptive stages. This circumstance, as Eckenrode indicates,[5] contrasts with the Revolutionary movement in New England, where the middle and lower classes supported the changing order. The landed gentry of Virginia, bred in a sphere of freedom and holding positions of ease and prominence in their communities, were jealous of any encroachment upon their civil and political rights, whether this encroachment was by the royal governor, by the liberty loving delegates from the mountains, or by the imperial authority three thousand miles across the ocean. The planters had leisure for reading political tracts published in England and America and for discussing, in letters and conversation, political theories and social tendencies. They developed,

[4] H. J. Eckenrode, *Separation of Church and State,* ch. i; W. T. Thom, *The Struggle for Religious Freedom in Virginia: The Baptist;* H. R. McIlwaine, *Struggle for Religious Toleration in Virginia.*

[5] H. J. Eckenrode, *The Revolution in Virginia,* p. 39.

as did no other class of colonials, a very definite opinion of the political nature of the British empire and of their own rights as British citizens in that empire. To these Virginians, the colonial controversy from 1763 to 1775 was fundamentally a dispute over the constitution of the empire.[6] The principle, rather than the tax on tea, sugar, or stamps, impelled leading Virginians to enter the struggle for reform.[7] The cause of Massachusetts was essentially the cause of Virginia, of America, of all the empire.

Landon Carter was a typical conservative statesman of the Old Dominion. With several large plantations worked by slaves, many worldly comforts, a good social position, and heavy debts, he cultivated tobacco and talked politics. He "saw early that the Agents and King intended to subject us to slavery" and claimed for himself the honor of being among the first to sound protest in the Virginia assembly. In 1775 he wanted to reform the empire. If the British Government "should be so mad" as to refuse reform, he was "willing to be compelled to independence," but he

[6] An excellent example of the constitutional controversy in Virginia is the pamphlet, *Consideration of the Present State of Virginia* (1774) attributed to the Attorney-General, John Randolph, and *Consideration of the Present State of Virginia Examined* by Robert Nicholas.

[7] H. J. Eckenrode, *The Revolution in Virginia,* chs. i, ii.

would never take it through choice, "agreeable to the sophisticated non-sense of Common Sense, a mere cookery among the Congress." He "chose to be compelled to independency rather than have it out of choice, because as a constitution of Government, none is so good as the British."[8]

In considering the transition from loyalty to rebellion, these constitutional disputes and the inherent self reliance of colonials have received extensive and merited attention, but economic conditions in the colony should not be entirely overlooked or too lightly dismissed. The political philosophy of a people is seldom unaffected by the material situation. Two rich treasure houses of information pertinent to the economic history of Revolutionary Virginia have hitherto remained unexplored—the Patent Books in the State Land Office and the Auditor's Books in the manuscript division of the Virginia State Library. These unexplored sources furnish illuminating information upon three phases of the Revolution in Virginia—the land problem, public finance, and private debts.

Due to wasteful methods of cultivation and the rapid increase of population, the material well being of many Virginians in 1775 depended upon their development of unoccupied land. The lead-

[8] *William and Mary College Quarterly*, XX. 177.

ing historian of the Revolution in Virginia has dismissed the plausibility of the notion that conflicting interests in land claims "forced the land hungry Virginians to go into the Revolutionary movement," because "lands in the wilderness at that time were too plentiful and too cheap to fight about."[9] Lands were plentiful indeed, yet, as more than one colonial empire builder from Georgia to Massachusetts knew to his great discomfort, it was extremely difficult to secure a title to any lands west of the mountains that would stand test before a court. As early as 1759 Governor Dinwiddie reported to the Board of Trade that the best lands in Virginia had been taken up. The population of the colony increased from less than three hundred thousand in 1750 to over half a million in 1775. In 1774 Governor Dunmore reported to Lord Dartmouth that quitrents were being collected from ten million acres.[10] The price of government lands was fixed at ten shillings per hundred acres, but the market price, fluctuating with supply and demand, was much higher—two, three, and sometimes four pounds an acre for well located meadow lands in the tide-water and piedmont sections.[11] Patrick Henry considered ten

[9] H. J. Eckenrode, *The Revolution in Virginia,* p. 39.

[10] Dunmore to Dartmouth, Public Record Office C. O., 5, 1352, Library of Congress Transcripts.

[11] J. C. Ballagh, *Letters of Richard Henry Lee,* I. 48.

pounds per hundred acres a low price for well located lands in the west.[12] So great was the demand for land that tracts lying between former and old surveys in the settled part of the colony were sought out, surveyed, and patented. Between March, 1772, and July, 1774, 1164 grants were made for approximately three hundred thousand acres, scattered hither and thither from Princess Anne to Augusta County. The demand for land was insatiable, but the supply east of the line fixed under the Proclamation of 1763 was exhausted by 1774.

Would-be land owners looked longingly into the fertile fields of what are now Kentucky and Ohio. The Lees of Virginia had organized the Mississippi Land Company with Dr. Arthur Lee as their principal agent in London.[14] George Mason, among the foremost of the radical political leaders, visualized a Virginian empire in the west.[15] Patrick Henry was jealous for Virginia's claim under her charter, and when Richard Henderson proposed that he become a member of the

[12] W. W. Henry, *Patrick Henry,* I. 121.

[13] Patent Books, Virginia Land Office, *passim.* See also Dunmore to Dartmouth, December 24, 1774, Public Record Office C. O., 5, 1353. Library of Congress Transcripts.

[14] C. W. Alvord, *Mississippi Valley in British Politics,* II. 93, 110, 123.

[15] K. M. Rowland, *Life and Correspondence of George Mason,* I. 152-8.

Louisa Company and a proprietor of Kentucky, Henry protested that "the lands belonged to Virginia" and that Henderson's title was worthless.[16] By 1774 Virginia's claim to these rich lands was threatened by the extreme likelihood that the royal government would grant the Ohio and Kentucky country not to a Virginia company, but to the Walpole Company, managed by the Whartons of Philadelphia, including Lord Camden and the Earl of Hertford of the English court, and sponsored by George Grenville.[17] Dunmore wrote Dartmouth that there was great apprehension in Virginia lest the Philadelphia company should secure a charter from the crown and Virginia thus lose her claims based upon the charter of 1609 and Indian treaties. Dartmouth replied:

> the opinion which your Lordship says has prevailed in Virginia of His Majesty's determination upon the propositions for a new Government upon the Ohio was certainly well founded, and therefore you ought to be very cautious of taking any steps with regard to the lands intended to be included within the limits of that Government, and the impropriety of grants west of the limits of Virginia must be obvious to you and every proposition of settlement in that country under the plea of Indian purchases is not only a violation of the King's rights, but diametrically opposite to and inconsistent with those principles of policy that have hitherto operated against settlements in such situation.[18]

[16] Deposition of Patrick Henry, Executive Communications, 1776.

[17] Alvord, *Mississippi Valley in British Politics*, II. 93.

[18] Dartmouth to Dunmore, July 6, 1774, Public Record Office, C. O., 5, 1352, Library of Congress Transcripts.

The royal government, by a restrictive and selfish policy, raised a legal barrier between coveted lands and ambitious Virginians.

Apart from the activities of the Virginia land companies, some farseeing Virginians purchased claims to bounty lands offered by Governor Dinwiddie in his proclamation of 1754. Under the leadership of George Washington and Captain William Crawford and with the approbation of Governor Dunmore, the more enterprising claimants had two hundred thousand acres surveyed and apportioned after the Indian treaty at Fort Stanwix.[19] The British government, however, closely watched these proceedings. Dunmore was instructed to send a detailed list of the surveys to Lord Dartmouth. Virginians also purchased claims to bounty lands offered "to officers and soldiers of our armies" under the royal Proclamation of 1763. As the lands east of the Proclamation line were exhausted, they sought to have their claims located west of that line. In July, 1773, Governor Dunmore issued ten patents, totalling 13,616 acres, in accordance with the Proclamation of 1763.[20] The Governor was sharply repri-

[19] *Virginia Gazette,* January 14, 1773.

[20] Patent Books, Virginia Land Office, *passim.* George Washington received 2183 acres; John Connolly, 2000 acres.

manded for permitting these surveys, when the reports reached the Colonial Office. "I think fit to suggest to you", Dartmouth wrote to Dunmore April 6, 1774, "that independent of the general impropriety of laying out any lands within that tract until His Majesty's pleasure be finally known, it seems to me at least very doubtful whether provincial officers and soldiers are included in that proclamation, and therefore I trust that you will grant no patents for such locations or allow no further locations to be made upon such claims until you shall have received further orders from the King."[21] This reprimand and more definite instructions, which followed in September, 1774,[22] stopped the location of bounty

[21] Dartmouth to Dunmore, April 6, 1774. Public Record Office, C. O., 5, 1352, Library of Congress Transcripts.

[22] Lord Dunmore was of the opinion that settlements west of the mountains should be restricted, but, as this policy was not considered when the grants to Walpole and others were made, he thought the practicable thing would be to open the country to the Virginians. "I have learnt from experience," he wrote to Dartmouth, "that the established authority of any government in America, and the policy at home are both insufficient to restrain the Americans, and they do and will remove as their avidity and restlessness incite them. They acquire no attachment to place, but wandering about seems engrafted in their nature, and it is a weakness incident to it, that they should forever imagine that the lands further off are still better than those upon which they are already settled.

"I have had, my Lord, frequent opportunities to reflect upon the emigrating spirit of the Americans, since my arrival in this government. There are considerable bodies of inhabitants, settled at greater and less distances, from the regular frontiers of, I believe, all the colonies. In this colony proclamations have been published from time to time to restrain them. But im-

lands west of the mountains. Patrick Henry, Hugh Innes, Peter Jefferson, and many lesser ex-soldiers and speculators held unsurveyed claims.[23] These claims could not be located until there was a change in the royal policy.

In the third place, the western aspirations of these would-be landowners were manifested by Lord Dunmore's War. In order that surveys might be made, it was necessary that the troublesome Shawnee Indians be driven out. Dunmore's War was conducted to accomplish this. It is im-

pressed from their earliest infancy with sentiments and habits very different from those acquired by persons of a similar condition in England, they do not conceive that government had any right to forbid their taking possession of a vast tract of country, either uninhabited, or which serves only as a shelter to a few scattered tribes of Indians. Nor can they be brought to entertain any belief of the permanent obligations of treaties made with those people, whom they consider as but little removed from the brute creation. These notions, my Lord, I beg it may be understood, I by no means pretend to justify. . . . Three considerations offer themselves for His Majesty's approbation. The first is to suffer these emigrants to hold their lands of and incorporate with the Indians; the dreadful consequence of which may be easily foreseen, and which I leave to Your Lordship's judgement. The second is to permit them to form a set of Democratic Governments of their own upon the back of the colonies, a scheme which for obvious reasons, I comprehend cannot be allowed to be carried into execution. The last is that which I propose to Your Lordship, to receive persons in these circumstances, under the protection of some of His Majesty's Governments already established and in giving this advice, I have no thoughts of bringing dishonor upon the Crown. On the contrary the measure appeared to me as the wisest, and safest that could be entered into under the circumstances above mentioned." Dunmore to Dartmouth, December 24, 1774, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

[23] Patent Book A, 330, 331, 333. F, *passim.*

possible to estimate to what extent personal interests influenced the policy of Governor Dunmore.[24] While governor of New York, he purchased fifty thousand acres subject to the usual quitrent and made application for other lands, rent free.[25] He was suspected by the colonial office of being interested in the Illinois Land Company.[26] Be this as it may, Virginians heartily supported the war for pushing back their Indian foes and opening new lands for settlement. The expedition brought protest from Pennsylvanians, who were skeptical of Dunmore's personal motives, and from Sir William Johnson, who feared that a general Indian uprising would be the result. This war opened

[24] On May 16, 1774, Lord Dunmore had forwarded a petition of David Franks, William Murray, John Campbell, Alexander Ross, Bernard Gratz, and others of Philadelphia for an extensive grant of land west of Virginia to Lord Dartmouth. The Illinois Land Company was founded by David Franks and Company, rivals of the Whartons for the Indian trade. Dunmore, in his transmission of the petition, approved of the grant. Again, the Governor of Virginia urged that, despite all efforts to the contrary, settlers were crossing the mountains (see note 22), and this grant to the Illinois Land Company would insure a lawful government under British control. Dunmore was accused of being personally interested in the enterprise, but this he later denied. Dunmore to Dartmouth, May 16, 1774, Public Record Office, C. O., 5, 1352, Library of Congress Transcripts.

[25] Dunmore to Dartmouth, December 24, 1774, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

[26] Dunmore's explanation of his interest in western lands was accepted as satisfactory by Lord Dartmouth. The explanation left "no room in the Royal Breast to doubt of the uprightness of your Lordships intentions." Dartmouth to Dunmore, March 3, 1775. Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

the door for the settlement of Kentucky and the winning of the West; it cleared the way for the claims of Virginians to the fertile lands in the blue-grass country. But it was frankly disapproved of by the royal government.[27]

[27] There has been an attempt to characterize the battle at Point Pleasant as the first battle of the Revolution (See J. T. McAllester in *Virginia Magazine of History and Biography,* IX. 395-407). McAllester takes the position "that everyone in Virginia knew the Revolution was coming" in 1774 and that Lord Dunmore, in conjunction with his agent, Dr. John Connolly, planned the annihilation of the frontier militia. The Governor sent this militia into an apparently hopeless contest with the Indians, while he was absent with the regiments from the east. Years after the battle, General Lewis made a statement to this effect. Contemporary opinion in Virginia held that the war was against the Indians and the Pennsylvania interest in the west: "Lord Dunmore wants 1200 men to fight the Pennsylvanians" (Diary of Landon Carter, *William and Mary College Quarterly,* XIV. 183). Others saw in the war an opportunity to get claims to western lands surveyed. Colonel William Preston, in calling out the militia of Fincastle County, rejoiced "that the opportunity we have so long wished for is now before us." (R. G. Thwaites and L. P. Kellogg, *Dunmore's War,* p. 67). Lyman Draper characterized this war as the "most popular event of Dunmore's administration" (*Ibid.,* p. 425). A contemporary in Pennsylvania wrote from the western part of the colony at the outbreak of the war that it was an attempt "of Virginia land jobbers to execute plans formed for their private emolument" (*Ibid.*). John Bowers, for six years a member of the Virginia assembly from Botetourt County, disapproved of the war as unjustifiable and without authority, and "it merely was to get their lands surveyed that Lord Dunmore and Colonel Lewis had undertaken it" (*Virginia Magazine of History and Biography,* XIII. 46). The British government knew nothing of the expedition; "I am at loss to guess at the motives which led to the hostilities against the Shawnee," Dartmouth wrote to Sir William Johnson, February 1, 1775, (*New York Colonial Documents,* VIII. 531). The war was in no respect the beginning of the Revolution. The soldiers who had accompanied Dunmore to the frontier drew up resolutions of confidence in the Governor. Several months later, when Dunmore was enraged over the threats of Patrick Henry, he swore "that he had once fought for Virginians, and that, by God, he would let them see he could fight against them" (*Virginia Maga-*

Upon his return from the western campaign, Lord Dunmore found awaiting him from Lord Dartmouth a letter dated September 8. It expressed well the British policy in the west. Dunmore was called sharply to account for the encouragement he had given to surveys and settlements beyond the mountains and especially for the support he had given the Illinois Land Company, a rival of the Walpole Company. "Admitting it to be advisable, as Your Lordship contends, upon grounds of general policy to allow settlements under the authority of the government of Virginia beyond that line [the Proclamation line of 1763] (of which myself and the rest of the King's Servants entertain very grave doubts)," while treaties with the Indians exist, "every attempt on the part of the King's Subjects to acquire title to and take possession of lands beyond the line fixed by His Majesty's Authority and every encouragement given to such attempt, can be considered in no other light than a gross indignity and dishonor to the Crown." The King "expresses his great displeasure at your action", and if it were not for his kindness he "would make use of other

zine of History and Biography, XIII. 49). Virginia was determined to make the most of this war against the Indians and Pennsylvania agents; the following summer a delegation was sent by the assembly to treat with the Shawnee Indians on the basis of Dunmore's victory (See *Virginia Magazine of History and Biography,* XIV. 54-75).

marks of Royal displeasure.—It is the King's pleasure that you do exert every power and authority which the constitution has vested in you, to preserve inviolate the engagements entered into in the King's name with the Indians, and to prevent any settlement whatever being made upon any pretense beyond the line settled at the Congress at Lochaber in October, 1770.—You are to make no grants nor exercise any other jurisdiction than shall be absolutely necessary to preserve public peace and prevent violence and bloodshed" in that district. Dunmore was directed to send immediately a list of all the land grants made during his administration.[28] The Governor had written Dartmouth that he knew nothing of the Proclamation of 1763 and the policy of not granting lands west of the mountains. This, Dartmouth ironically observed, "must have been a very extraordinary neglect of the Council."[29] Several weeks later Dunmore was censured for opening war against the Indians without making "known your intention to His Majesty's Superintendent for the Northern District and consulting him upon it."[30]

[28] Dartmouth to Dunmore, September 8, 1774, Public Record Office, C. O., 5, 1352, Library of Congress Transcripts.

[29] Dartmouth to Dunmore, October 5, 1774, Public Record Office, C. O., 5, 1352, Library of Congress Transcripts.

[30] Dartmouth to Dunmore, January 7, 1775, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

With these strict orders and under severe reprimand, Dunmore could no longer give his consent to surveys of lands west of the mountains; subsequent grants were smaller and confined to territory east of the Appalachians.[31]

Neither the established authority of the governments in America nor the imperial policy of the mother country was able to retard the restless pioneers. The British ministry decided to open gradually the west for settlement. The Board of Trade, after an extensive investigation, made recommendations to the Privy Council in October, 1773, and new instructions for granting lands were sent to the royal governors in 1774. But these instructions did not calm the irate Virginians. Free grants were prohibited; the newly prescribed system of surveys prevented indiscriminate locations; lands were to be sold at auction, and quitrents in Virginia were doubled.[32] Thomas Jefferson held the view that the land did not belong to the king, and, as "his majesty has lately taken on him to advance the terms of purchase and of holding to double of what they were—It is time for us to lay this matter before his majesty, and to declare that

[31] Patent Book E, 1-40 *passim.*

[32] Public Record Office, C. O., 5, 241. Library of Congress Transcripts. Conveniently found in S. E. Morison, *The American Revolution 1764-1788,* pp. 97-100, or in *New York Colonial Documents,* VIII. 357.

he has no right to grant lands of himself."[33] A committee of lawyers, appointed by the Virginia convention of 1775 to determine whether the King could advance the terms of granting lands, recommended that all persons forbear purchasing or accepting grants on the conditions prescribed in the new regulations.[34]

Agricultural Virginia, dependent upon land for a livelihood, looked to the west. If Virginia's claim to the west was to be honored, there must be a change in the policy of the royal government, or that government must be abolished in Virginia. There was no prospect of a change in the policy of the royal government. The Walpole grants were ready to pass the Seal, and the lands beyond the mountains would be lost forever to Virginia.

The western policy of Virginia subsequent to the Declaration of Independence is even more indicative of the aspirations of leading Virginians. One of the last official acts of Lord Dunmore as governor of Virginia was the outlawing of Richard Henderson, who attempted to make a settlement in Kentucky on lands purchased from the Indians. The Revolutionary government played Dunmore's rôle to its logical conclusion.

[33] Thomas Jefferson, *Writings* (Ford edition), II. 85.

[34] Dunmore to Dartmouth, March 14, 1775, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

Virginia blocked Henderson's schemes, first in the Continental Congress and then at Williamsburg. George Rogers Clark visited Patrick Henry, governor of Virginia, in the summer of 1776 and secured from him an order for gunpowder for the defense of the Kentucky settlements. Henderson's purchase was declared void, and Virginia provided a government for the territory.[35] Nor were the Virginians willing that Congress should establish a claim over these lands. On July 8, 1778, almost contemporary with the final action in Virginia on the claims of Henderson and Company, Patrick Henry discouraged an expedition that Congress was preparing to send against Detroit. Virginia, he declared, was in no position to aid any such undertaking.[36] At the same time, Henry, as governor, heartily supported with Virginia men and Virginia money George Rogers Clark in his conquest of the Northwest. Posts on the Mississippi were seized. Governor Hamilton was brought a prisoner to Virginia. The Indians were quieted. By force of arms, Virginia reëstablished the claim to that country which she was so near losing in 1775.

The coveted West once more a part of Virginia, the policy of expansion, checked by the Brit-

[35] A. Henderson, *Conquest of the Old Southwest,* chs. xiv, xv, xvii.

[36] Papers of the Continental Congress, LXXI.

ish government, was resumed. Thomas Jefferson presented his draft of the first Virginia land law to the assembly in May, 1779. All surveys made before 1778 by surveyors of William and Mary College[37] were to be valid. The large grants made by the royal governor and his council were declared void, unless such grants had been followed by actual survey. Settlers who were on the land prior to January 1, 1778, were to receive patents for their lands up to four hundred acres; six hundred and forty acres were to be set aside in each village for public use; no quitrents were to be charged. Despite the protest of the Continental Congress, a land office was opened by the state, and lands were put on sale at the old price of ten shillings per hundred acres.[38] Patrick Henry had sold military certificates issued under the Proclamation of 1763 to Thomas Madison, and Madison immediately proceeded to have surveys made. Henry paid forty pounds sterling into the land office and took out patents for ten thousand acres.[39] Henry Lee,[40] Levin Powell,[41]

[37] In colonial Virginia surveys were made under the supervision of William and Mary College.

[38] For the protest of Congress, see *Journals of the Continental Congress,* XV. 1226-28. The Virginia land law, a neglected landmark in the national land system, is printed in full in W. W. Hening, *Statutes of Virginia,* IX. 35-50.

[39] Patent Book A, 330-333; F, 400-470.

[40] *Ibid.,* F, 274.

[41] *Ibid.,* F, 356.

Hugh Innes,[42] Andrew Lewis,[43] Hugh Mercer,[44] George Washington,[45] William Christian,[46] and many other Virginians secured the lands that the British government had denied them. Before the end of the Revolution approximately four thousand grants for one million, three hundred and fifty thousand acres had been made, followed by surveys and the deeds recorded in the Virginia land office.[47] Four fifths of these grants were issued to Virginians. There were a few large grants made under the Proclamation of 1763,[48] but the greater number of grants were for tracts of between one hundred and fifty and three hundred acres. No one who had hoped to secure lands across the mountains could be unaffected by this change in policy. What the British ministry had closed fast to loyal Virginians, the Revolutionary government opened to the patriots upon most liberal terms.

Furthermore, the colony could hardly have been unaffected by the condition of public finance. The

[42] Patent Book, F, *passim.*
[43] *Ibid.*, E, *passim.*
[44] *Ibid.*, E, *passim.*
[45] *Ibid.*, E, *passim.*
[46] *Ibid.*, A, *passim.*
[47] Patent Books A to F, *passim.*
[48] For example, William Christian received a patent for 7000 acres (Patent Book A); Andrew Lewis, 7000 acres (Patent Book E); and Hugh Mercer, a patent for 10,000 acres (*Ibid.*).

three principal sources of revenue were the quitrents, which yielded between ten and fifteen thousand pounds, the custom duties, with a yield of from six to nine thousand, and the poll tax, which ranged from one to five thousand per year. In 1773 there was a favorable balance of eight thousand pounds from the quitrents and nearly two thousand from the customs, after the royal officials in Virginia had been paid.[49] This balance, however, was not at the disposal of the colonial assembly, but was subject to the control of the royal treasury. The cost of local government was increasingly great, and the poll tax, the principal revenue of the assembly, was exploited to meet these growing expenses.[50] Virginians could not have regarded with complacence the increase of poll taxes while a surplus, created from the quitrents and customs, was being paid into the royal treasury.

At the same time, the taxpayer and colonial treasury were being strained to the utmost to redeem the paper money issued during the Seven Years War. Redemption was remarkable. During the war Virginia had authorized £450,000 of paper. In 1767 only £206,757 were outstanding.

[49] Dunmore to Dartmouth, February 7, 1775, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

[50] W. Z. Ripley, *The Financial History of Virginia 1609-1776.*

However, in 1769, £10,000 were issued to meet the contingent expenses of government, and, in 1771, £30,000 were issued for the relief of planters whose tobacco had been destroyed in the public warehouses by the freshets of the previous spring. Despite this increase of £40,000, only £54,391 were outstanding in 1774.[51] This rapid contraction of the currency created discontent and unrest among Virginians, many of whom were debtors. This discontent was considerably increased when it was discovered that John Robinson, the late treasurer and the leader of the political machine of the tidewater aristocrats, had loaned £103,000 of paper money that should have been destroyed to bankrupt politicians who had supported the machine.[52] Discontented Virginians raised a cry for more paper money. In 1765, and again in 1767, the House of Burgesses passed a bill to establish a loan office, but the council defeated the measure.

Added to these conditions, and partly ensuing from them, was the unfavorable trend of foreign exchange. Colonial planters bought heavily in England from 1765 to 1775, especially during the

[51] *William and Mary College Quarterly*, XX. 228. A most suggestive and interesting account of the finances of Virginia from 1763 to 1775, written by the colonial treasurer, Robert Carter Nicholas, and first printed in the *Virginia Gazette*.

[52] W. E. Dodd, *Statesmen of the Old South*, pp. 16-18.

period immediately following the repeal of the Townshend Acts. The balance of trade was against Virginia. Usually Virginia exchange was about fifteen per cent. under par on London. In 1772 the exchange fell to twenty-five per cent. under par, and in May, 1773, at the semi-annual meeting of the Virginia merchants, the rate was fixed at thirty per cent. below par. At this point bullion began to move. The colonial treasurer, Robert Carter Nicholas, complained that he was unable to keep the usual reserve of fifteen or twenty thousand pounds in gold and silver in the treasury. By 1774 the colonial reserve was exhausted, and the treasurer was unable to redeem the fifty-four thousand pounds of paper then in circulation. The bullion had gone to Europe. Public credit began to totter. Discontent and the demand for paper money became more emphatic.[53] But the British government, fostering the interests of the merchants, was the unwavering opponent of a paper currency. Revenue was going from Virginia into the royal treasury; the colony was losing its supply of bullion to offset the unfavorable balance of exchange; public credit was tottering, and these conditions produced a social and economic situation favorable to the growth of Revolutionary propaganda.

[53] *William and Mary College Quarterly*, XX. 228.

More appalling than the deplorable condition of the public finance was the heavy indebtedness of the Virginia planters to British merchants. These debts had become "hereditary from father to son for many generations, so that the planters were a species of property annexed to certain mercantile houses in London." Jefferson estimated that "certainly £2,000,000 sterling and possibly more was due from Virginia to British merchants."[54] In 1791 a group of merchants in Great Britain submitted to their government a statement of amounts due them from American customers in 1775. The total, with fourteen years interest, amounted to £4,930,656; £4,137,944, over five sixths of the total, was due from states south of Pennsylvania; £2,305,408, over half of this amount, was due from Virginia.[55] With their plantations, slaves, and sometimes household furniture hypothecated, the planters were in an almost inextricable position in 1775; it seemed that nothing less than virtual repudiation could relieve them.

In May, 1774, when the Revolution was in its inceptive stage, Thomas Jefferson and Patrick Henry made the sweeping proposal before the extra-legal meeting of the assembly that all pay-

[54] Jefferson, *Writings,* IV. 201.
[55] S. F. Bemis, *Jay's Treaty,* p. 103.

ments on British debts should stop.[56] The conservatives, however, were not yet ready for the leadership of these radicals. In October, 1777, when the principles of rifle democracy were supreme, a law was passed which provided in part for the sequestration of these debts.[57]

These debts involved the leading families of Virginia. John Randolph's father owed the London firm, Capel and Osgood Hanbury, eleven thousand pounds sterling; he was also a heavy debtor to Jones and Farrell.[58] Archibald Cary was in debt to the Hanburys for over seven thousand pounds and to Archibald Lidderdale and Company for nearly three thousand pounds.[59] Kippen and Company, of Glasgow, and Jones and Farrell, of London, held bonds against Thomas Jefferson for approximately ten thousand pounds.[60] Benjamin Harrison, later governor of Virginia, owed two thousand pounds to British trading houses, most of it to the Hanburys.[61] Patrick Henry, Burr Harrison, Edmund Pendleton, George Webb,

[56] *Journals of the House of Burgesses of Virginia,* 1773-1776, p. 139. James Parker, June 17, 1774, wrote from Williamsburg to Charles Steuart, a former Virginia merchant, that Henry, R. H. Lee, and George Mason were for stopping payments on British debts. *Magazine of History,* III. 153.

[57] See below, pp. 80f.

[58] Auditor's Cash Book, May 4, 1780.

[59] *Ibid.,* May 23, 1780.

[60] Jefferson, *Writings,* IV. 348, 357.

[61] Auditor's Cash Book, May 8, 1780.

William Brent, William Harrison, Joseph Jones, the Balls, the Lees, the Flemings, and the Marshalls took advantage of the Revolutionary provision to pay sterling debts due to British merchants in depreciated Virginia currency.[62] Ryland Randolph paid a debt of nearly six thousand pounds.[63] Benjamin Waller took £6578 in depreciated Virginia currency to the Virginia loan office and discharged sterling debts due to seven British merchants.[64] Such were the advantages that the Revolution offered to the indebted planter. In addition to these more outstanding Virginians mentioned, five hundred debtors paid depreciated paper money into the state loan office[65] to discharge sterling debts due to British merchants. The political philosophy of such Virginians could not have been unaffected by their economic situation.[66]

There is here no inclination to underestimate the political theories involved in the American

[62] *Ibid.*, 1778-1780, *passim.*

[63] *Ibid.*, May 21, 1778.

[64] *Ibid.*, 1778-1780, *passim.*

[65] *Ibid.* Many of the small debtors paid off mortgages held against them by British merchants. A great majority of the debts were for merchandise.

[66] Eckenrode has indicated that the Revolution in Virginia was led by the upper class. Two members of Dunmore's council, John Page and William Nelson, became active patriots. Not more than two or three graduates of William and Mary College were loyalists. Of the three hundred and eight attainted by the law of 1778 in Massachusetts, sixty-five were Harvard graduates. Powerful economic forces explain in part this puzzling contrast. See Eckenrode, *Revolution in Virginia,* especially chapter ii.

Revolution, to question the devotion of Washington, the patriotism of Henry, or the political astuteness of Jefferson. But an examination of the constitutional principles that appealed to leading citizens does not afford a complete explanation of the momentous movement which transformed Virginia, the most ultra-British colony in North America, into a staunch supporter of the Revolutionary doctrines. Lands to the west, claimed by Virginia under charters, won from France partly by Virginia men and with Virginia money, and sorely needed by Virginia in 1775, were being exploited by an irresponsive government—bartered and pawned to court favorites, politicians, and speculators. The rapid contraction of the currency to meet the demands of the British trading interests and the ruinous trend of Virginia exchange accentuated the diverse economic interests of the colony and the mother country. The planters were hopelessly in debt to the British merchants. Current political theories in the colonies and the economic interests of the planters were in harmony.

CHAPTER II

CIVIL WAR IN VIRGINIA

The bulwarks of loyalism were gradually disintegrated by economic forces, yet many conservatives persisted in their attachment to the mother country. There were possibilities of a strong loyalist party, but skilful leadership, toleration, and imagination were essential. The last colonial governor, John Murray, Earl of Dunmore, possessed none of these qualities. He was stubborn, narrow-minded, and indiscreet. His policy alienated the support of the ultra-conservatives; dislike and distrust of the royal representative placed the radicals in control and sealed the fate of the loyalist party in Virginia.

Revolutionary propaganda took root slowly among the conservatives in the colony. During the decade preceding 1775, the Virginia assembly periodically passed resolutions upholding their rights as Englishmen and drank toasts to the king, his ministers, and the royal governor. Each protest became more emphatic, but the toasts were never omitted. The assembly of March, 1773, the last assembly in Virginia to enact legislation approved by a royal governor, was prorogued. It

was the beginning of the end. The next session ended yet more abruptly. In May, 1774, news of the Boston Port Bill reached Virginia. Robert Carter Nicholas proposed to the assembly that June 1, the day the bill was to become effective, be observed as a day of fasting. On May 26 Governor Dunmore, angry at the proceedings, dissolved the assembly and made his way to the frontier to drive back the Shawnee Indians. The day following the dissolution of the assembly, the members met in a tavern at Williamsburg and appointed a committee of correspondence to consult with the other colonies.[1] A few days later, while many delegates were yet in Williamsburg, news arrived of the determined opposition of Boston. A convention in the colony was called for August to elect delegates to a general congress to meet in Philadelphia. In this convention, as in the convention that assembled the following March, the conservatives were in control. "Our patriots Peyton Randolph, the Lees, Robert Carter Nicholas, and Pendleton", wrote Jefferson, "stopped at the half-way house of John Dickinson."[2]

But events moved rapidly in the spring of 1775; fighting had taken place in New England; Lord

[1] Lingley, *Transition in Virginia*, ch. ii.
[2] Jefferson, *Writings*, I. 12.

Dunmore became alarmed and ordered gunpowder to be removed from the powder house to a ship of war. The radicals, led by Patrick Henry, threatened the Governor with the militia, but the conservatives preserved peace. When the delegates assembled in May in response to the Governor's summons, the militia also appeared. Dunmore offered the assembly the conciliatory measures of Lord North, but these were refused. The Governor, fearing for his personal safety, took refuge on board a British ship at Yorktown. Later, thinking Yorktown and its vicinity an unsafe place for a royal governor and his family, Dunmore established his headquarters at Gosport, a village on the Elizabeth River not far from Norfolk. The assembly sanctioned the action of the extra-legal conventions of August, 1774, and March, 1775. A third convention in July, 1775, called for two regiments of militia, appointed a conservative committee of safety, and ordered an election. The radicals won their first victory in excluding all dissenting clergymen and teachers from participation in this election. The government of the colony was placed in the hands of the committee of safety during the absence of the Governor.[3]

[3] Hening, *Statutes of Virginia,* IX. 15, 55-60.

Loyalism predominated in two sections of the colony: Norfolk, in the extreme southeast, and about Fort Pitt, in the extreme northwest. Norfolk, a town of six thousand people, was the commercial center of the colony. Many of the residents were un-Americanized Scottish merchants, who, as factors and agents for British trading houses, controlled the trade of the colony. They had no interest in the constitutional quarrel between the colony and the mother country; their great desire was peace, harmony, and good business. The commercial policy of the British government, which the colonies in the North were attempting to break down, protected their trade. These merchants had nothing in common with the radicals, who proposed to stop payments due them from the planters. The continental association was injurious to their business, and they were reluctant to obey its regulations. The committee of safety for Norfolk informed the convention in July, 1775, that non-importation and non-exportation would bring great distress upon a town almost entirely dependent upon trade.[4] The merchants of Norfolk protested and petitioned the assembly for relief, but the petitioners were se-

[4] *Virginia Magazine of History and Biography*, XIV, 51.

verely censured and the petition dismissed. Several merchants were summoned before the local committee of Isle of Wight for not respecting the rules of the association.[5] Robert Shedden, a Scottish merchant at Norfolk, in violation of the non-importation agreement, sent orders to Andrew Lynn, of Glasgow, in November, 1775.[6] The committee of Accomac declared Arthur Upshur out of favor with the country and fined him a hundred pounds for disobeying rules of the association.[7] George Perdue found himself in considerable difficulty for selling needles for double the price usually charged.[8]

Among these loyal merchants at Norfolk, Lord Dunmore sought refuge in June, 1775. He had with him one hundred and twenty-five regular soldiers, whom he thought reliable. With the exception of "Mr. Wormley, Mr. Corbin, Rev. Mr. Camm, Mr. Byrd and the Attorney General," there were none who had been prominent in the government whom he could trust.[9] The merchants, how-

[5] *Proceedings of the Committee of Safety, Isle of Wight,* pp. 42, 43.

[6] *Virginia Magazine of History and Biography,* XIV. 51.

[7] *Journal of the House of Delegates,* October 1776, p. 110.

[8] *Proceedings of the Committee of Safety, Isle of Wight,* pp. 42, 43.

[9] Dunmore to Dartmouth, June 25, 1775, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

ever, openly supplied the exiled Governor with provisions.[10]

Fort Pitt, in the extreme northwest, was a frontier trading post claimed by Virginia and Pennsylvania. After his war against the Shawnee Indians, Dunmore had placed Dr. John Connolly in charge of Virginia's interest about the fort. Connolly followed up Dunmore's victories and made a treaty with the Indians.[11] Of greater importance to the royal government was the loyalism Connolly probably kept alive about Fort Pitt.

[10] The House of Delegates had twenty-two merchants brought before it in the spring of 1775 for trading with Dunmore. Dunmore to Dartmouth, June 25, 1775, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

[11] *Virginia Magazine of History and Biography,* XIV. 78-79; 54-75. Connolly had experienced great difficulties with the Pennsylvania authorities; they arrested him on June 21 (1775), but he was released before June 29. This arrest had nothing to do with Connolly's loyalty. Some inhabitants from West Augusta, after Dunmore's flight, had petitioned the Continental Congress to erect a government over the western country. This petition was sent to Virginia by one of her delegates in Congress, and Virginia immediately took steps to conclude a peace with the Indians. James Wood was sent by that colony to summon the Indians, but already, before the arrival of Wood, Connolly, in conjunction with the committee from West Augusta, had held a conference with the Indians (June 19-July 6) and concluded a treaty. There is no convincing evidence of Connolly's disloyalty to Virginia prior to his visit to Dunmore in August, 1775, unless it be an address delivered to Dunmore from the frontier. This address has no date, but was drawn up at Fort Pitt and bears Connolly's name; Connolly was not at Fort Pitt after his visit to Dunmore, and the address must have been prepared before he left the frontier in July, 1775. The Pennsylvania authorities were antagonistic to Connolly as an agent from Virginia and not as a loyalist. Connolly's own account of his activities (*Pennsylvania Magazine of History and Biography,* XII, XIII) was written to secure a pension.

In July, 1775, Connolly left the northwest to visit Dunmore. He wrote to George Booth, a member of the Virginia convention from West Augusta County, that he hoped his treaty would be satisfactory to the convention at Richmond, "as it has been particularly so to the inhabitants of our country." The Pennsylvania agents, he wrote, have done everything to "prejudice my character and depreciate the character of my public service. . . . It has been diligently propagated through the country that I, as a ministerial tool, would be extremely solicitous to forward their designs and should be ready to support every measure which Lord Dunmore might recommend to me; I have only to assure you that such insinuations are malicious and foreign to truth."[12] Connolly acknowledged that he was under obligations to Lord Dunmore,[13] but "such things will go no further with me than they ought to. I distinguish between a ministerial office and a friend." He asked that he be permitted to visit Lord Dunmore "on personal business."

In the British Public Record Office there is an address from John Campbell, John Cannon, John Connolly, Edward Ward, Alexander McKee, George Gibson, Simon Girty, Alexander Ross,

[12] *Virginia Magazine of History and Biography*, XIV. 78.

[13] *Ibid.* Dunmore had given Connolly several grants for lands.

Benjamin Harrison, and "several hundred inhabitants of transmountain Augusta" to Lord Dunmore assuring him of their appreciation of the great service he had rendered the frontier. They were not, the address declares, misled by wild rumors, but were loyal to him and to the king. Dunmore sent this address to Dartmouth September 24, 1775.[14] It is possible that Connolly delivered it to Dunmore when he visited him in August.

Dr. Connolly was on board ship with Dunmore several weeks, and while there they probably worked out the "Connolly Plot".[15] Connolly was to raise a regiment of militia among his own and Dunmore's friends about Fort Pitt, and Alexander McKee, an Indian trader, was to raise a regiment of Indians. Together they were to march to Alexandria, Virginia. Dunmore, with the loyalists he could muster in the east, proposed to join Connolly's forces on the Potomac and thus to sever the northern from the southern colonies. Connolly left Dunmore to lay the plan before General Gage in Boston and to induce Gage to send troops and supplies to aid Dunmore.

Dunmore proceeded with his plan to join Connolly on the Potomac. He wrote Dartmouth, Oc-

[14] Dunmore to Dartmouth, September 24, 1775, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

[15] For details of the "Plot" see R. G. Thwaites and L. P. Kellogg, *Revolution in Upper Ohio,* p. 136.

tober 5, that he was confident he could secure all the volunteers needed if he erected the king's standard, but he was waiting until arms arrived before he called for enlistments.[16] He employed effective methods to quiet the opposition of the local press: "The public prints of this little dirty Borough of Norfolk has for sometime past been wholly employed in exciting the minds of all ranks of people in the spirit of sedition and rebellion, by the grossest misrepresentation of facts, both public and private." One Saturday noon, in early October, Dunmore sent a small detachment of soldiers on shore, seized the press, paper, ink, and two of the printers. The local militia was called out, but those who responded showed no disposition to fight; a crowd of citizens watched the seizure without attempting to prevent it. Press and printers were transferred to Dunmore's service on board his ship. The mayor and aldermen sent a mild protest to the marooned Governor.[17] In fact, sentiment in Norfolk favored Dunmore; a meeting was held, and he was invited to occupy the town.[18] The association had worked so disastrously for the merchants that a majority of the

[16] Dunmore to Dartmouth, October 5, 1775, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

[17] *Ibid.*

[18] Eckenrode, *The Revolution in Virginia,* p. 66.

people in Norfolk had no sympathy with the patriot assembly at Williamsburg.

The patriots at Williamsburg distrusted the merchants at Norfolk and prepared to send troops to the disaffected town. The local militia of Princess Anne and Norfolk Counties were assembled at Kempsville, the county seat of Princess Anne. It was rumored that aid was being sent to them from North Carolina.[19] Dunmore, adding a few Negroes and a score of Scottish clerks to his regulars, proceeded against the three hundred colonials at Kempsville. The patriots, aware of Dunmore's approach, placed their troops in ambush, and Dunmore walked into the trap. The ill-disciplined local militia did not open fire, but fled to the woods, when they might easily have gained a victory. A few, it is said, were too drunk to run away and were taken prisoners.[20] This victory greatly encouraged the loyalists. Dunmore proclaimed martial law in the colony and set up the king's standard.[21] The next day three hundred took the oath of allegiance at Kempsville; a few days later five hundred subscribed at Norfolk. The standard was set up in Princess Anne, Norfolk, and Nansemond Counties, and it was reported that up-

[19] *Virginia Magazine of History and Biography,* XIV. 130-36.
[20] John Page to Thomas Jefferson, Jefferson Papers, XI. 51.
[21] *Virginia Magazine of History and Biography,* XIV. 247.

ward of three thousand subscribed to the oath.[22]

Shortly after the victory at Kempsville, Dr. Connolly, prevented by military operations from taking a northern route to Fort Pitt after his consultation with General Gage at Boston, as had been planned, arrived in Virginia by sea. His reports from Boston were favorable. The inhabitants of Princess Anne County drew up resolutions pledging themselves to support the crown and Dunmore with the last drop of their blood.[23] The exiled Governor, confident of success, determined to act with vigor. Connolly was given a commission as lieutenant colonel; Dr. John F. D. Smythe was appointed a surgeon and Allen Cameron a lieutenant in the regiment Connolly was to raise—The Royal Foresters. On November 18 the three were hurried off to Detroit to execute their part of the plan. Dunmore's small boats sailed boldly up and down the rivers and bays, plundering plantations and storehouses and seducing Negroes to leave their masters. Little discrimination was made between the loyal and the disaffected.[24] On November 17 he offered freedom to slaves who would join his forces. He organized two regiments of militia, The Queen's

[22] Intercepted Letters, Papers of Continental Congress, II. 398.
[23] *Virginia Magazine of History and Biography,* XV. 18.
[24] Eckenrode, *The Revolution in Virginia,* ch. ii.

Own Loyal Virginia Regiment and a Negro regiment of runaway slaves, Lord Dunmore's Ethiopian Regiment. Even the conservatives were alarmed.

Robert Carter Nicholas, of the "conservative household", recommended to the assembly that it would be well to secure hostages.[25] The conservative committee of safety at Williamsburg was forced to act. Two regiments of militia were ordered to Norfolk; North Carolina promised to send a third. Lord Dunmore fortified himself with some five hundred troops at Great Bridge, where each regiment must pass to reach Norfolk. Here, on December 11, Dunmore was defeated and forced to fall back to Norfolk.[26] The patriot forces entered the loyalist town on December 14 and forced Dunmore to return to his ships in the harbor.

On January 1, 1776, Dunmore received one hundred and thirty-four soldiers and three thousand stand of arms, part from General Gage and part from St. Augustine.[27] Encouraged by reinforcements, Dunmore fired upon the patriot troops, who were celebrating the New Year by a

[25] Robert Carter Nicholas to the Assembly, November 25, 1775, Jefferson Papers, II. 191.

[26] Dunmore to Dartmouth, December 23, 1775, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

[27] *Ibid.*

blusterous parade in the loyalist town. They returned the fire.[28] Dunmore consulted with Captain Bellew, a naval officer, and decided to set fire to the warehouses on the docks that patriots used as ambush to molest the British ships. Dunmore set the precedent of firing Norfolk, a town ardently in sympathy with him; the patriots spared nothing in the disaffected district. Fifty houses, valued at £3648, were destroyed by fire from Dunmore's ships; 863 houses, valued at £110,807 and personal property valued at £8000 were destroyed by the patriot troops. In February the remaining 416 houses were burned by order of the convention to prevent Dunmore from using Norfolk as a base.[29] The loyalist town was devastated; a royal governor had hurled the first fire brand.

That part of the "Connolly Plot" which was entrusted to Dr. Connolly and his lieutenants came to a more abrupt failure than the part Dunmore had undertaken. A week after leaving Dunmore, the three were captured in Frederick County, Maryland. Connolly was brought before the Continental Congress and imprisoned. Dr. Smythe made his escape from the Frederick County jail, but was later captured near Fort Pitt and taken to

[28] *Ibid.*, January 4, 1776.

[29] *Journal of the House of Delegates 1835*, Appendix. A full report of the losses at Norfolk in 1776.

Philadelphia.[30] After the imprisonment of Connolly and the failure of Dunmore, Alexander McKee, commissioned to raise the Indians for participation in the "Plot", went to Fort Detroit. In June, 1776, John Nevill, in charge of the Virginia forces garrisoning Fort Pitt, wrote the committee of safety that "some of the leading men in this quarter were strongly suspected of disaffection to the common cause." The arrival in the early summer of two ships with one hundred and fifty regulars and a supply of arms for the British garrison at Fort Detroit aroused the general fear that McKee and the Indians were to harrass the frontier.[31] But McKee became interested in land speculation, and the "Connolly Plot" came to an end.

Dunmore continued his plundering expeditions throughout the spring and summer of 1776. Many Negroes left the plantations to take advantage of his proclamation of November 17, 1775.[32] Our typical conservative, Landon Carter, who believed the British government the best on earth, found his vocabulary inadequate to express his contempt for "that D—— Dunmore" after ten of his slaves had taken silver from his house, provisions from

[30] *Journals of Continental Congress,* IV. 394, 415, 445.

[31] *Virginia Magazine of History and Biography,* XVI. 53-55.

[32] Robert Carter Nicholas to Thomas Jefferson, November 25, 1775, Jefferson Papers, II. 191.

his storehouse, a new boat from the wharf, and had gone to seek their fortunes with the exiled Governor.[33] He was "compelled to independency." Edmund Pendleton and Robert Nicholas, conservatives, denounced Dunmore and all his works.[34] Lord Dunmore had forfeited all chances of bringing the conservatives into the loyalist party.

Rewards for loyalism in Virginia were meager. Dunmore was unable to supply provisions for those who followed him from Norfolk to the ships. Levin Powell wrote from Williamsburg in 1776 that "the women and children whose behavior makes them think it dangerous to remain on shore and are now on board Dunmore's ships have been obliged to send to our officers begging provisions and firewood."[35] The lot of Andrew Sprowle was extremely hard. Sprowle was one of the wealthiest men in Virginia and for thirty-six years president of the court of Virginia merchants. He had provided barracks for the royal soldiers when Dunmore was in possession of Norfolk. When the patriots entered the town in December, 1775, Sprowle took refuge on board one

[33] *William and Mary College Quarterly*, XVI. 268. Diary of Landon Carter.

[34] Edmund Pendleton to Thomas Jefferson, Jefferson Papers, II. 285.

[35] Randolph Macon College, *Branch Papers*, I. 34.

of his vessels in company with Dunmore. The patriots destroyed his property in Gosport and Portsmouth and took possession of his plantation, "Souls Point". "These distresses were too much for Mr. Sprowle's advanced age. He fell a sacrifice, May 29, 1776, still on board a vessel at Guin's Island, Virginia." His wife, who had accompanied him, obtained permission from Dunmore to visit her son, a prisoner in the patriot jail at Halifax, North Carolina. The Williamsburg committee of safety refused her permit and sent her back to Dunmore, who would not "suffer her on board her own vessel." After being driven back and forth between Dunmore and the patriots, Captain Hamond secured her passage to Glasgow. She was placed on the Virginia pension list for one hundred and fifty pounds a year, but "Lord Dunmore wantonly struck her off for no reason that she can learn."[36] The undestroyed Sprowle property in Virginia was later sequestered and sold. Dunmore gave Mrs. Sprowle no protection in Virginia or aid in England.

Local and central committees of safety and the military authorities were entrusted with safeguarding patriot interests against the disaffected.

[36] Petition of Katherine Sprowle to Thomas Townsend, Esq., July 22, 1782, Public Record Office, C. O., 5, 1344, Library of Congress Transcripts.

The local committees about Norfolk, either because of loyal proclivities or helplessness to act against a majority, were lenient in their treatment of the loyalists. The local committee of safety arrested John Goodrich, who had deserted the Virginia service and undertaken to supply Dunmore with powder. Although there could have been no question of his guilt, he was given his liberty. "Queer Committees of our safety," observed Landon Carter.[37] On April 3, 1776, Robert Shedden, son-in-law of Goodrich, was arrested and brought before the Norfolk committee and charged with communicating with Dunmore; he was acquitted. By order of the Williamsburg committee of safety, he was rearrested the first of May and placed in jail, "because by his conduct he appears unfriendly to America."[38]

The central committee at Williamsburg and the assembly were more positive in their policy towards the loyalists, though not harsh. In December, 1775, the assembly offered pardon to anyone who had given aid to the enemy, if he would take an oath of allegience to the provisional government within two months; if he failed to take the oath, he would be liable to arrest and his

[37] *William and Mary College Quarterly*, XVII. 34.
[38] *Virginia Magazine of History and Biography*, XVI. 40.

estate to seizure. The execution of the law devolved upon local committees, and these committees were lenient.[39] In the summer of 1775, twenty-two citizens, among them Neil Jamieson and Archibald Ritchie, were summoned before the assembly, but they gave satisfactory account of their conduct and were dismissed.[40] In May, 1776, thirteen white men and twelve Negroes, arrested in Norfolk, were sent to Williamsburg for trial. Their cases were heard by the convention in June; the Negroes were sent to work in the lead mines of the state; several of the whites, including the Goodriches, were given a parole, and others were discharged.[41]

The military authorities, upon their occupation of the disaffected district about Norfolk, were not so lenient with the loyalists. The house of Neil Jamieson, who had acted as a supply agent for Dunmore,[42] was deliberately burned by order of General Lee as an example to any who might support Dunmore.[43] The military authorities recommended that the residents be moved to the interior

[39] Hening, *Statutes of Virginia,* IX. 101.

[40] Dunmore to Dartmouth, June 25, 1775, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

[41] *Virginia Magazine of History and Biography,* XV. 414; XVII. 112. *Journal of the Virginia Convention 1776,* p. 97.

[42] Dunmore to Dartmouth, January 4, 1776, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

[43] Eckenrode, *The Revolution in Virginia,* pp. 91-92.

of the country to prevent any intercourse between them and Dunmore's ships. The inhabitants, however, protested, pleading the "obvious difficulties that would attend removal of four or five hundred at one time" over the bad roads, and feigned attachment to the patriot cause.[44] The recommendation was carried into execution with little vigor.

The loyalists were crushed. Dunmore had deserted them; patriots harrassed them on every hand. Their city homes were destroyed, and they were driven from their plantations. Some chartered the ship *Albion* and went to England;[45] others took passage to Scotland on merchant ships. Some went to the West Indies. Many merchants sought safety with the British army in the North, directing that goods they had ordered for Virginia be delivered to them there. Neil Jamieson was a considerable trader in New York throughout the Revolution.[46] One hundred and twelve Scottish merchants from Virginia opened shops in Philadelphia when the British occupied that city.[47]

Few Virginia loyalists performed active service for the king during the war. After the defeat at Great Bridge, Dunmore's loyalist regi-

[44] *Virginia Magazine of History and Biography*, XVII. 173-5.

[45] *Journal of the House of Delegates, May 1777*, p. 97.

[46] Stevens, Manuscripts in British Archives Relating to America, 1773-1783, XII. 1241.

[47] W. H. Siebert, *Loyalists in Pennsylvania*, p. 45.

ment, The Queen's Own Loyal Virginia, was incorporated with the Queen's Rangers. Captain John Saunders,[48] John Agnew,[49] a former chaplain of the Suffolk Parish, and his son, were the only Virginia loyalists to attain distinction in military service.

The loyalists who used discretion remained in Virginia throughout the war. Archibald Ritchie, father of the noted Virginia editor, did not leave the state, although several times summoned before local committees and once before the assembly to answer for his loyalist sentiment. Richard Corbin lived quietly on his plantation, unmolested, while his son was in the British service. Ralph Wormley, whose loyalism was well known, remained at his plantation, "Rosegill". William Cunningham and Company, British merchants, kept an agent in the state throughout the war. Such instances, however, were exceptional; by 1777 those most active in the loyalist cause had departed from the state. Dunmore had failed to furnish them even the support that he could have given, and, as the agent of the Virginia loyalists later reported, "for those who remained in Virginia nothing was possible but a submission

[48] E. A. Jones, *Journal of Alexander Chesney,* p. 108.

[49] Lorenzo Sabine, *Loyalists of the American Revolution,* I. 154-155.

and acquiescence" to the patriot government. They had been so betrayed by Dunmore that "they were ever cautious of their action."[50]

Despite the neglect of the loyalists by Dunmore, many who remained in Virginia were ready to assist the king's cause if the king's troops were near. They had no occasion to assist the British until the theater of war was shifted to the south. At the time General Phillips and General Arnold passed through Virginia with their armies, attempt was made to arouse the loyalists, especially those on the Eastern Shore of Maryland and Virginia. In the vicinity of Petersburg, a number of inhabitants drew up a petition to the Virginia assembly setting forth the distress of the country "and the expediency of accepting the terms then held out by the British."[51] However, the dispatches from the Eastern Shore were intercepted in Maryland, and the plans came to naught.

The spirits and the hopes of the loyalists were again revived upon the approach of the armies from the south. Agents from Governor Wright of Georgia and Colonel Brown, commander of the Georgia loyalists, became active on the frontier. In the summer of 1779 the report was spread in

[50] Colonel Upham's report on the Virginia loyalists to Governor Franklin, November 6, 1781, Public Record Office, C. O., 5, 175, Library of Congress Transcripts.

[51] *Ibid.*

the back-country that the colonies had been sold to France, and the people were returning to their allegiance to the British king. John Henderson, in what is now Kentucky, was told that already sixty thousand colonials had joined the king's army. Agents, purporting to have come from John Robinson, offered six shillings six pence sterling per day and four hundred and fifty acres of land with the quitrent free for twenty-one years to all who would enlist. Those who refused to enlist were to be seized by the loyalists and sent to the British in Georgia.[52] Some enlisted. The British planned that these enlisted loyalists, joined by others recruited in North and South Carolina, should capture the lead mines in Virginia and then proceed to Winchester. There, in conjunction with the loyalists from Detroit, they would release the British and German prisoners confined under the convention of Saratoga.[53] But the danger from the loyalists on the Virginia frontier was never great. They needed a British base from which to operate; Kentucky was midway between the British posts on the Lakes and the back-country of the Carolinas to the south.

[52] *Virginia Magazine of History and Biography,* XXVI. 373.

[53] *Ibid.,* p. 376. There were between seven and eight hundred British and about fifteen hundred German prisoners at Winchester. Jefferson to Huntington, November 3, 1780. Papers of Continental Congress, LXXI.

The British agents, for the most part Indian traders, were able to do little more than keep the Indians in a hostile mood.[54] In the summer of 1779 Colonel Preston was sent to suppress a loyalist uprising on the Monongahela.[55] The following year, Preston, with the aid of Captain Lynch, so effectually quelled an uprising in the southwestern counties that no further attempt was made to arouse loyalist sentiment.[56] The number of loyalists on the Virginia frontier could never have been large; Dunmore, in 1777, in a report to Dartmouth, named only twelve persons in the back-country who were well disposed to "His Majesty's Government"; eight of these were at Fort Pitt and included such characters as Alexander McKee, the Indian trader, and Alexander Ross, a Scottish merchant.[57]

In the east there was enthusiastic coöperation with the British as they advanced from the south. Lord Dunmore had joined the British at Charleston in 1780, anticipating the restoration of Virginia to the crown and his reassumption of the governorship. Loyalists on the Rappahannock

[54] Report of James Scott, Public Record Office, C. O., 5, 80, Library of Congress Transcripts. Scott was an Indian trader and British agent.

[55] *Virginia Magazine of History and Biography*, XXVI. 373.

[56] *Ibid.*, VII. 6.

[57] Dunmore to Dartmouth, February, 1777, Public Record Office, C. O., 5, 1353, Library of Congress Transcripts.

thought the overthrow of the patriot party nearly effected. Middlesex County, according to report, became "a hole of Toryism". The "name of Wormley, Beverley, Frasier and Ritchie is ever joined to that of Tory.—Hobbs Hole is a Tory sink."[58] Trade was carried on with the British who came into the Chesapeake; Fauntleroy Dye, at one time an inspector of tobacco in Richmond, was reported by Richard Henry Lee and Richard Parker for corresponding with the enemy and holding meetings of disaffected persons in his house. Dye declared publicly that if he was drafted for the militia he would join the British.[59] He and several of his accomplices, after offering some resistance, were arrested and charged with openly assisting the enemy and encouraging desertions. They were sentenced to confinement without bail for the remainder of the war.[60]

In the summer of 1780, seventy-five were confined in the Bedford County jail as suspected of corresponding against the United States.[61] The governor ordered Ralph Wormley, Jr., Phillip Grymes, Simon Frazer, Archibald Ritchie, and seven other persons on the Rappahannock arrested

[58] *Calendar of Virginia State Papers,* II. 181.

[59] *Ibid.,* p. 155.

[60] *Ibid.,* p. 174.

[61] Virginia Legislative Petitions, in *Virginia State Library Report,* V. 211.

and taken to Richmond.[62] Reverend John Lyons of St. George Parish, Accomac County, was arrested for selling three hundred bushels of wheat to the enemy and for "openly discouraging" and speaking disrespectfully of the American cause. He was tried by court martial and sentenced to five years imprisonment.[63]

As Lord Cornwallis' army approached Virginia, loyalism in the state took on new life. Governor Jefferson announced that no neutrality would be recognized,[64] and Lord Cornwallis demanded an oath of allegiance. Forced to choose between the two, "Princess Anne and Norfolk and all Nansemond below Suffolk took protection" from Cornwallis by subscribing to the British oath.[65] Few held out in "the Counties of Elizabeth City, York, James City and Warwick when these Counties were called in by Cornwallis to be paroled."[66] Colonel Upham reported "that if the Standard had been raised the probability is that all the Lower Counties would have come in." However, the standard was not raised, and, al-

[62] *Calendar of Virginia State Papers,* III. 456.

[63] *Ibid.,* pp. 305, 340, 344, 350, 362, 509, 511, 544, 586.

[64] *Ibid.,* I. 445.

[65] *Ibid.,* II. 189-90.

[66] Colonel Upham's report to Governor Franklin, November 6, 1781, Public Record Office, C. O., 5, 175, Library of Congress Transcripts.

though Cornwallis demanded an oath of allegiance, those loyalists who offered their services to his Majesty's armies were curtly refused.[67] Probably one hundred and fifty Virginia loyalists sought protection with Cornwallis and were with him when he surrendered at Yorktown. He attempted to place these loyalists on the same basis in the capitulation as his troops, but the Americans insisted that the loyalists were citizens, not soldiers, and must be given over to the civil authorities. The loyalists, especially those who had joined Dunmore at Great Bridge, had then taken refuge with the British army in the North and had now returned to Virginia with the British forces, were certain that their lot with the civil authorities would not be an easy one. Eight of the most notorious were set on board the sloop of war *Bonetta,* which, according to the terms of capitulation, was to sail to New York unsearched. Other loyalists applied for passage, but, as they did not have the proper papers, the captain of the vessel refused to permit them on board. Several received hints that they were to be badly used by their former fellow citizens and attempted to hide themselves on the *Bonetta,* but they were discovered, roughly handled, and roundly cursed by

[67] *Ibid.*

the captain, who swore he could not carry all Virginia to New York on one sloop.[68]

After the surrender at Yorktown, the civil authorities took no immediate steps to punish the loyalists. The provisioning and guarding British troops taxed every resource of the state. By December 17, 1781, a million and twenty-five thousand pounds of depreciated currency had been advanced to recruiting officers to obtain guards, and less than one hundred recruits enlisted.[69] At Winchester the shelter was poor and the guard insufficient; one hundred of the enemy soldiers hired themselves to farmers; some married American girls and applied for citizenship, while others crossed the mountains to the frontier. Two hundred Yorktown prisoners were quartered in Williamsburg, but no guard was provided. The soldiers created general alarm in the quiet old capital by robbing stores for provisions and sometimes burning houses.[70] These disorders quelled, attention again turned to the loyalists.

In the fall of 1781 Colonel Thomas Newton reported to Governor Nelson that Norfolk and Princess Anne Counties threatened to become a nest of loyalists. Trading with the enemy, who

[68] *Ibid.*
[69] *Calendar of Virginia State Papers,* II. 546, 672.
[70] *Ibid.,* p. 233; III. 70, 101.

had good money, was more profitable than trading with citizens, who had only the Virginia currency. The loyalists who were paroled caused much trouble—"many of them are now living in affluence and have plenty and the good men who left their homes are starving for want of necessities."[71] The loyalists were so numerous about Norfolk that the officers feared to do their duty, "but if examples are not now made of several who have actually been in arms with the British every person will find it to their advantage to be Tories."[72] Colonel William Wishart and Colonel Dobney led a crusade in Princess Anne County against the returned loyalists. Eighteen were arrested and jailed for treason; of these, fourteen were accused of bearing arms against the state, and four of treasonable practices.[73]

Thirty loyalists about Yorktown were arrested and sent to the Richmond jail in December.[74] Two tavern keepers, Richard Hogg and Gabriel Galt, and two merchants, John Cox and Zachariah Rowland, all of Richmond, were committed on bond of one thousand pounds specie to appear for trial before the "Supreme Executive" on charge

[71] *Ibid.*, II. 542.
[72] *Ibid.*, p. 591.
[73] *Ibid.*, pp. 611, 626.
[74] *Ibid.*, p. 634.

of disaffection.[75] William Calderhead, a British merchant who had enlisted with Dunmore, fought with the British at the Battle of Great Bridge, and left Virginia early in the war, was among the refugees at Yorktown. He was tried before a court in Chesterfield County and sentenced to parole at the house of Niel Buchanan.[76] Richard Burnley of Virginia and Basil Jackson of Maryland, loyalists at Yorktown, were among those who had made an unsuccessful attempt to secure passage to New York on the *Bonetta*. They were arrested by the patriots and marched off to Richmond with a score of other loyalists. Burnley, exhausted from want of food, was permitted to return to his home, where he died five days later. Jackson was jailed at Richmond. He employed counsel, was brought to trial on a writ of habeas corpus, and, as no witness appeared against him, was released. After further difficulties in Virginia, he made his way to the British in New York.[77]

Because of the difficulty of transporting prisoners and witnesses to Richmond, a law of November 17, 1781, provided that the governor might appoint special judges in each county to

[75] *Calendar of Virginia State Papers*, II. 626.

[76] *Ibid.*, III. 56.

[77] Deposition of Basil Jackson, Public Record Office, C. O., 5, 175, Library of Congress Transcripts.

try those accused of treason.[78] When the special court met in Princess Anne, there was a near riot, but by "spirited exertion they were quelled."[79] The county lieutenant of Norfolk had difficulty in finding "three men to act as judges in a court for trying the traitors, they were all taken up and we have sufficient proof to hang many of them."[80] In the Henry County court, Isaac Donelson was tried in January, 1782, and admitted to bail. Several loyalists were convicted, among them John Holland of Nansemond County, but appeals were granted to the general court, and then to the assembly. The assembly was lenient in granting pardon, often requiring only that the offender leave the state immediately.[81] Throughout the Revolution, no person suffered death for treason in Virginia by order of a court or the assembly.[82]

Indifference to the patriot cause should not be confused with loyalty to Great Britain. Indifference was so great by 1777 that it was necessary to pass a draft law to obtain soldiers. Under this law, each county was allotted its quota of militia;

[78] Hening, *Statutes of Virginia,* X. 460.

[79] *Calendar of Virginia State Papers,* III. 101.

[80] *Ibid.,* p. 102.

[81] For acts of pardon to persons condemned for treason see Hening, *Statutes of Virginia,* XI. 21, 120, 152.

[82] See petition of John Holland in *Journal of House of Delegates, May, 1783,* p. 15.

if any county failed to furnish the designated number, the local field officers were to assemble all men subject to military service and have them draw lots. Slips equal to the number to draw were prepared with the word "service" written on as many slips as soldiers were required.[83] The drawing sometimes occasioned riots. In Augusta and Rockbridge Counties, the papers for laying off the draft districts were seized by mobs and destroyed.[84] In Hampshire County, in April, 1781, the draft officers were challenged by a mob led by John Claypole; the defiant mob boldly drank the king's health in a nearby tavern.[85] The situation became too serious for the local authorities, and three companies of mounted militia were sent from Frederick County to suppress the rebellion. Claypole and his followers, among them many deserters from the army, surrendered; they were pardoned.[86]

In Accomac County, between a hundred and fifty and two hundred men assembled, April 28, 1781, the day for the drawing of the draft, to protest against the law, and when Colonel George Corbin, the county lieutenant, attempted to proceed, they seized his papers. The drawing was

[83] Hening, *Statutes of Virginia,* IX. 337-40.
[84] *Calendar of Virginia State Papers,* III. 107.
[85] *Ibid.,* p. 40.
[86] *Ibid.,* pp. 113, 163, 262, 681.

postponed until the following Thursday week. On that day the mob returned, took possession of the courthouse, placed a sentinel at the door, and declared they would resist the draft to the extent of their lives. The leaders were later arrested, tried by court martial, and sent to the army.[87] In Northampton County there was difficulty over both draft and taxes.[88] In Lancaster County the county lieutenant summoned the newly drafted militia, but they appeared as a mob, seized the papers, disarmed the officers, and left.[89] In Bedford the county lieutenant made no attempt to draft the county quota of militia in March, 1781, for to have done so "would have caused a general disturbance."[90]

These rioters over the draft laws and taxes were not "loyalists". By their contemporaries, they were often called "Tories", but this opprobrium did not necessarily signify loyalty to Great Britain. Occasionally some diligent patriot professed to discover that this "disaffection" resulted from British activity, but the available evidence indicates that these outbursts were nothing more than rebellion against taxes and military service.

[87] *Ibid.*, II. 97-100.
[88] *Ibid.*
[89] *Ibid.* I. 394.
[90] *Ibid.*, p. 590.

The number of loyalists in Virginia was small, at no time during the Revolution exceeding a few thousand. Their activity and numerical strength varied with circumstances. After the exodus of 1775-76, the loyalists were not in a majority in any community, unless in a limited area on the Rappahannock or the Eastern Shore. Sabine mentions only one hundred and fifteen Virginia loyalists; of the two thousand five hundred claims filed with the British government for loyalist property loss during the Revolution, only one hundred and forty were from Virginia.

The loyalists came from no particular class and from no one section. The Scottish traders about Norfolk, before their departure, formed the nucleus of the loyalist party. An analysis of the one hundred and forty loyalist claims from Virginia filed with the parliamentary commissioners in London and Halifax indicates that these claims represent ninety-three claimants. Fifty of these ninety-three designate themselves as merchants, thirteen as officials, eight as ministers, eight as planters, four as physicians, three as teachers and seven give miscellaneous occupations. Equally significant is the fact that only thirteen of the ninety-three designate themselves as natives of Virginia, while sixty-four designate themselves

as natives of the British Isles temporarily in Virginia, all but fifteen having arrived after 1760.[91] Of the seventy-two members of the Virginia Merchants Association listed in the Virginia *Gazette* of October 18, 1774, only three or four were later patriots. The official class furnished a small quota to the King's supporters: Reverend John Camm, Ralph Wormley, Richard Corbin, Garvin Corbin, and William Byrd, all of old Virginia families and at one time members of the Virginia council, were loyalists.[92] John Randolph, the King's attorney-general in Virginia, and a brother of Peyton Randolph, left Virginia with his daughters at the outbreak of the war, but his son, Edmund Randolph, joined the patriot party, became governor of Virginia and the first attorney-general of the United States.

Of the approximately one hundred ministers of the Church of England in Virginia at the outbreak of the Revolution, eleven became members of the local committees of safety: Thomas Smith was chairman of the committee in Westmoreland, Miles Seldon of the committee in Henrico, and Alexander Purdie of the committee in Brunswick. Peter Muhlenburg, a minister from Dunmore

[91] *Loyalist Transcripts* (New York Public Library), XXVII, LVIII, LIX, *passim.*

[92] Two members of Dunmore's Council, John Page and William Nelson, went with the patriot party.

County, became a major general and led Virginia troops with distinction; Charles M. Thurston, from Frederick, gave no less display of patriotism in the assembly as a representative from his county. Thirty-four other ministers of the Church of England, by one act or another, manifested their loyalty to Virginia. Thirteen of the clergy of the established Church leave records of their disloyalty: John Agnew joined Dunmore at Norfolk and later went into the Queen's Rangers; William Andrews, of Southampton County, Alexander Cruden, of Essex, William Harrison, of Prince George, and John Bruce left Virginia during the war. Jonathan Boucher, at one time clergyman in Westmoreland County and counting George Washington among his parishioners, left Virginia on the eve of the Revolution. John Lyons, of Accomac, and John Wingate, of Orange County, remained in the state, but gave the patriots trouble. Alexander Gordon, of Halifax, resigned his parish and for a time lived in Petersburg. Thirty-nine ministers of the established Church leave behind no record of their loyalty either to Virginia or England.[93] The Baptists were patriotic, although some of them had scruples

[93] B. S. Thomas, *Loyalty of the Church of England in Virginia*, is the basis of this classification. Statements of the author have been checked whenever possible, and in some instances the results have been changed.

against serving in the militia.[94] "The Methodists," wrote Josiah Parker, county lieutenant for Isle of Wight, "are preaching the gospel of passive obedience and point out the horror of war in so alarming a manner that it has caused many to declare they will suffer death rather than kill even an enemy—this is a new doctrine and inculcated by some sensible preachers of England, which, I am told, is paid by the Ministry through Wesley for this purpose. It must be discountenanced or all the Tories will plead religion as excuse and get license to preach."[95] On the other hand, Philip Bruce, a Methodist minister in eastern Virginia, was a zealous supporter of the Revolution.[96]

No social or religious differences divided the loyalists and patriots in Virginia. From all classes and all sects, there came a sprinkling of loyalists. But at no time were they sufficiently numerous or active to menace greatly the patriot success.

[94] Thom, *The Struggle for Religious Freedom in Virginia.*
[95] *Calendar of Virginia State Papers,* II. 151.
[96] Bennett, *Methodism in Virginia.*

CHAPTER III

LEGISLATION AND FINANCE, 1775-1783

In October, 1775, the Continental Congress discussed Lord Dunmore's predatory policy in Virginia. Chase and Johnson, of Maryland, supported Richard Henry Lee and George Wythe, of Virginia, in urging Congress to adopt immediate and vigorous measures to make Dunmore a prisoner. Others, notably Zubly, of Georgia, who later joined the loyalist party in his state, thought the imprisonment of a royal governor would tend to alienate the sympathy of the friends of America in Europe; Zubly said he had come to Congress with "two views, one to reconcile the rights of America, and another to effect reconciliation. If a Royal Governor was captured what would be done with him". Congress, anxious to win the conservatives to the Revolutionary cause, adopted a resolution on October 6 recommending "to the several Provincial Assemblies or Committees of Safety" that persons be arrested whose going at large might endanger their respective communities.[1] In March, 1776, Congress, alarmed by loyalism in New York, recommended that the

[1] *Journal of the Continental Congress,* III. 280, 482-3.

local governments disarm all persons notoriously disaffected and "refusing to associate themselves in arms" for the defense of American liberty.[2]

At the beginning of the Revolution, the local governments looked to the Continental Congress to formulate a policy toward the loyalists, but Congress, by recommendations and resolutions, placed the responsibility with the provincial governments in the states. Congress lagged; the states went forward. By the end of 1776 eleven independent state governments had been established; they raised troops, collected taxes, made and executed laws, and, among other things, undertook the suppression of loyalism. Once in control of loyalist legislation, the state governments opposed congressional interference. In 1776 Congress, suspecting that the loyalists in Queens County, New York, intended to go to the aid of Boston, directed all disaffected in that county be disarmed and forbidden to trade and travel.[3] The provisional government in New York protested against this regulation of its local affairs and later sent a committee to Philadelphia that secured the withdrawal of the resolutions of Congress. On December 30, 1777, Congress ordered all loyalists or Americans in British ser-

[2] *Journal of the Continental Congress,* V. 205.
[3] *Ibid.,* p. 441.

vice who should be taken in arms by the American forces to be sent to the respective states to which they belonged, there to suffer the penalties prescribed by the states.[4] This was the final surrender by Congress of control over the loyalists.

On the sea, the jurisdiction of Congress over loyalist property was more far-reaching, in theory, if not in practice. In July, 1776, a committee, appointed by Congress to formulate a policy respecting British property taken on the sea, recommended that all goods, merchandise, and ships belonging to the subjects of the king of Great Britain and all others "who aid, adhere to, or in any way assist him", taken on the high sea, be confiscated. The recommendations were passed in the form of resolutions.[5] These resolutions were declared law in Virginia, and, according to Virginia law, rulings of the admiralty court of Congress were to be final in the state admiralty courts.[6] But, in actual practice, admiralty jurisdiction, as loyalist legislation, remained largely with the states. Each state, anxious to make as many captures as possible and thereby to swell the local treasury, offered rewards to successful captors. In Virginia one third of the prize was

[4] *Ibid.*, IX. 1069.
[5] *Ibid.*, V. 572, 591, 605.
[6] Hening, *Statutes of Virginia*, IX. 202-206.

given to the captors and the remainder, after the expenses had been deducted, was paid into the state treasury. In 1776 Captain Taylor seized four sloops having on board some Negroes who had been with Dunmore. Virginia sold the Negroes for six hundred and forty-two pounds.[7] Disputes between Virginia and Maryland over loyalist and British property seized in the Chesapeake were frequent. The amount of goods taken in the Chesapeake and about the Capes was never large. Enemy trade was insignificant, unless a British fleet was nearby to give protection.[8] The states, however, took precaution to safeguard their interests in all loyalist property that was seized, on land and sea; in actual practice, Congress exercised little authority.

After the futile attempts of Congress in October, 1775, and March, 1776, that body abandoned anti-loyalist legislation, and the individual states formulated such policies of suppression and punishment as local circumstances demanded. Following the congressional recommendations of October, 1775, Virginia, in December of the same year, prescribed a mode of punishment for enemies of

[7] *Journal of the House of Delegates, May 1777,* p. 88.

[8] There were about seventy vessels, varying in size and equipment, in the service of Virginia during the Revolution. See "Virginia Navy in the American Revolution" in *Southern Literary Messenger,* XXIV.

America in that colony. Any white person who had furnished intelligence to the enemy, had supplied him with provisions, or had borne arms against the colony, would be pardoned for the offense if he took an oath of allegiance to the provisional government within two months. If such person failed to take the oath, he was to be arrested and brought before a local court. Five persons appointed by the local committee of safety presided over this court. Here the accused was given a jury trial, and, if found guilty, was liable to imprisonment and his estate to sequestration. Proceeds from the sequestered estates were to be used for the benefit of the colony. Appeal could be taken from the decision of the local court to the central committee at Williamsburg, which body alone had the power to pardon. Slaves guilty of aiding the enemy, if taken in arms, were to be exported to the West Indies and exchanged for powder. If this proved impracticable, the local government should utilize their labor.[9] About Norfolk a few of the inhabitants had aided Dunmore, and many others had taken the British oath after the fight at Kempsville.[10] When the patriot militia appeared in Norfolk in December, 1775, many citizens took advantage of the liberal pro-

[9] Hening, *Statutes of Virginia*, IX. 101.

[10] See above, p. 39.

visions of this act and, in order to save their property, swore allegiance to the Williamsburg government as readily as they had subscribed to the British oath a month earlier. Others, known to have been with Dunmore, who did not take the oath, were arrested and, because the military authorities thought the local committees too lenient in punishing their disaffected neighbors, were sent in chains to Williamsburg for trial before the central committee of safety.[11]

The piratical raids of Lord Dunmore on the Chesapeake plantations provoked the Virginia assembly to pass a more stringent law in May, 1776, for the punishment of loyalists. This second law provided that anyone aiding, abetting, or assisting an enemy of the colony "upon conviction, shall forfeit his, her, or their estates, real and personal, to the use of the commonwealth, and be imprisoned for such a time as the Committee shall direct."[12] The first law made punishment discretionary with the committee; the law of May, 1776, prescribed sequestration of property and imprisonment as a penalty for loyalism.

In June Virginia established a state government, definitely and officially declaring separation

[11] Peter Force, *American Archives,* Fourth Series, IV. 75; *Richmond College Historical Papers,* I. The letters of William Woolford.

[12] Hening, *Statutes of Virginia,* IX. 130-32.

from Great Britain. Increased vigor characterized subsequent legislation against loyalists. In October, 1776, proposed legislation against loyalists became a point of general disagreement between the lower and upper branches of the assembly. A joint session of the two bodies was held. George Mason, who had little sympathy for loyalists, led the discussion for the lower house.[13] The result was a law, passed December 12, providing that anyone who joined the enemy in levying war or who adhered to the enemy in giving them aid or comfort, would be guilty of treason, and, upon conviction, suffer death without benefit of clergy. The estate of the convicted was to be seized by the state. Under this law the governor had the power to stay execution, but only the assembly could pardon.[14] Persons guilty of an offense less than treason, *i.e.*, anyone who upheld the authority of the king of Great Britain but committed no overt act, should be fined not more than twenty thousand pounds and imprisoned for not more than five years.[15] Two copies of these laws were sent immediately to each county, ordered read in the churches, and published in public places.

[13] *Journal of the House of Delegates, October, 1776,* pp. 123, 125, 127.

[14] Hening, *Statutes of Virginia,* IX. 168.

[15] *Ibid.,* pp. 170-73.

In May, 1777, the assembly took another step to separate the loyalists and the patriots. A law was passed requiring every male inhabitant above the age of sixteen to renounce allegiance to the British government and pledge fidelity to the newly created state government. Justices of the peace in each county were to tour their districts and offer the oath to each citizen. Lists of those who took the oath and of those who refused to subscribe were to be filed with the clerks of the county courts. Persons entering the state were to be tendered the oath upon their entrance, and if any newcomer refused to subscribe, he was to be imprisoned until he gave bond to depart.[16] In Henry County six hundred and eighty-five persons took the oath before January 1, 1778; eleven refused, but several of these later subscribed.[17] In October, 1777, the assembly imposed a penalty of double taxes on all who had not subscribed to the oath by May 1, 1778. The next year the penalty tax was tripled.[18] There were many in Virginia who failed to subscribe to the oath by the allotted time, but their failure appears to have been due more to neglect or ignorance than to disloyalty to the state government. For example,

[16] *Ibid.*, pp. 281-83.
[17] *Virginia Magazine of History and Biography*, IX. 139-42.
[18] Hening, *Statutes of Virginia*, IX. 349.

David Coleman, of Amelia County, testified that he had not subscribed to the oath because he knew nothing of it.[19] Joshua Timoly and Simon Miller declared that the justices had never offered them the oath.[20] Forty citizens on the Monongahela River protested against penalties imposed upon them, because no opportunity to subscribe had been offered.[21] On May 1, 1778, the day by which all inhabitants of the state were to have subscribed, there yet remained many non-subscribers. An unsuccessful attempt was made in the assembly to extend the time;[22] a later session of the assembly provided that all delinquents who would take the oath should have the fines they had paid credited to their future taxes.[23]

The merchants require separate attention. At the beginning of the Revolution there were approximately two thousand merchants in Virginia, a majority of them of foreign birth.[24] Some of these merchants, notably those about Norfolk, persisted in loyalism and were subject, of course, to the legislation against loyalists. Others were

[19] Legislative Petitions, No. 208.
[20] *Ibid.*, Nos. 209, 210.
[21] *Ibid.*, No. 270.
[22] *Journal of the House of Delegates, May 1778*, p. 48.
[23] Hening, *Statutes of Virginia*, IX. 547.
[24] A. M. Schlesinger, *Colonial Merchants and the American Revolution*, p. 601.

willing to swear their allegiance to the patriot government and petitioned the convention in the summer of 1775 that a line of proper conduct be laid down for them. George Mason drew up an ordinance prescribing an oath, which he thought "no good man could object to"; the merchants at Richmond declared themselves pleased with it.[25] A majority of the merchants, despite their Scottish or English birth, desired to remain in the state as neutrals. Charles Duncan, a prominent Scottish merchant near Petersburg, in a petition to the convention in 1775, stated the position of many of his fellow tradesmen. Duncan explained that his purpose in the colony was to sell wares, not to meddle in politics. He desired the good will of the people and had attempted to persuade his neighbors that he was not disloyal to America. The neighbors would have none of it. "Their passions are heated and they disregard peaceful memorials" and demand that "I leave the property I have accumulated [and enlist in the militia] or remain to protect it at" their displeasure.[26]

The October session of the assembly of 1776 discussed for several weeks the perplexing problem of the neutral merchant. Some members were apprehensive of the effect upon the state if the

[25] *Calendar of Virginia State Papers,* I. 268.
[26] *Virginia Magazine of History and Biography,* XIV. 395.

mercantile class was dealt with too harshly, but the indebted planters, anxious to be free of their creditors, were determined upon their banishment. The foreign-born merchant, anxious to safeguard his business, might be neutral in action, but it was well known that he was anti-Revolutionary in sentiment. On December 18, the House of Delegates, in a committee of the whole, after much discussion, passed a resolution instructing the governor to put in force immediately the Statute Staple of 27 Edward III, chapter 17, against all the "natives of Great Britain who were partners with agents, storekeepers, assistant storekeepers, or clerks for any merchant in Great Britain—except only such as heretofore uniformally manifested a friendly disposition to the American cause, or are attached to this country by having wives or children here."[27] The Statute Staple provided that foreign merchants should depart within forty days, "and in the meantime they were not to be hindered in their passage."[28] If it appeared to the council that the merchants were unable to secure their passage to a foreign port, the vessels of the commonwealth should be used to deport them. Any merchant coming under the description of the above act, found in Virginia

[27] *Journal of the House of Delegates, May 1777,* p. 88.
[28] See *Statutes of the Realm,* I. 339.

after the time prescribed for his departure, was to be confined as an enemy. These resolutions, with the Statute Staple, were published in the Virginia *Gazette* and became effective January 1, 1777.[29]

After 1776, the state permitted no neutrality, and many of those merchants who were unwilling to subscribe to the oath of allegiance prepared to depart from Virginia. Thomas Reid, agent in Northumberland County for McCall, Denniston and Company, when he received notice of the Statute Staple, "reduced his dealings in as clear a form as possible, taking bills, bonds and notes in settlement"; when possible he made collections and closed accounts. Frequently, in settlement, he found it necessary to take assignment of bonds. If he could make no settlement, lists of balances were made out, and, if possible, the debtor was induced to acknowledge the debt. As he thought it unsafe to attempt to carry the bonds from the state, the agent hid them in an iron box in an old house. This done, Reid left Virginia.[30] Several merchants secured passage on the ship *Albion* in May, 1777; others left in merchant vessels. Some returned to England or Scotland; many went to

[29] *Virginia Gazette,* December 20, 1776.

[30] An undated petition in Letters to Madison, Madison Papers, LXXV.

the British lines to await the termination of the war. A few trusted chance and remained in Virginia without subscribing to any oath. Five merchants in Northumberland were reported later as disaffected and within the meaning of the resolutions of December, 1776.[31] Scottish merchants remained in Richmond and Petersburg throughout the Revolution.[32] A petition from Mecklenburg County to the House of Delegates in May, 1777, reported that merchants were in that county in violation of the resolutions and asked that they be forced to depart.[33]

In early Revolutionary days there was great danger that the patriot cause would be defeated by a well organized loyalist party in America. Early legislation, therefore, had as its chief object the expulsion of the disaffected and the suppression of loyalist sentiment. In this Virginia was preëminently successful.

The suppression of loyalism, however, was overshadowed more and more by the supreme struggle to finance the war, and, after 1777, loyalist legislation become closely identified with state finances.

[31] *William and Mary College Quarterly*, XX. 129.
[32] Samuel Mordecai, *Richmond in Bygone Days*, ch. ii.
[33] *Journal of the House of Delegates, May 1777*, p. 13.

Recourse to paper money was natural and inevitable, but the success of paper money depended upon the state's ability to keep it in circulation at a moderate rate of exchange. Paper money was made legal tender by the state government, but a majority of the merchants retained a sense of value which outweighed patriotism; although they might subscribe to an oath of allegiance and remain in the state, they were reluctant to accept the fiat money, which, in actual value, stood at a ratio of one and one-half to one in January, 1777, and three to one in October. A law of May, 1776, imposed a fine of twenty-five per cent. of the sum involved on anyone who refused to accept paper currency as legal tender.[34] Another law of May, 1777, stipulated that if a merchant or factor refused payment in paper money, although the contract might call for sterling, interest on the debt was to cease.[35] A petition, signed by a hundred and eighty-five persons in Mecklenburg County, sent to the assembly in May, 1777, set forth that the merchants and their factors, despite all laws, declare "that the paper money now in circulation is of little or no value, and absolutely refuse to receive the same in discharge of the debts due to British merchants with whom

[34] Hening, *Statutes of Virginia,* IX. 143-48; 286-89.
[35] *Ibid.,* pp. 297-98.

they are concerned."[36] Money in Virginia was becoming more plentiful each day. The Revolutionary government by January 1, 1778, had issued paper money for £946,492;[37] only £91,246 had been raised by taxes.[38] The indebted planter was in a position to pay off his debts with depreciated paper; if he, through his allegiance to the patriot cause, was compelled to accept the paper money, why should not his creditor, the enemy, be compelled to take it? Should the anti-Revolutionary merchant be permitted to refuse the state's currency and thus drive paper to a new lower level, while the patriot struggled to maintain its parity?

A state loan office, under direction of the treasurer, had been established in May, 1777, to borrow money for Virginia. Its function was much the same as the state branch of the Continental loan office.[39] To aid the state loan office, to appease the clamor of petitioners, and to maintain the currency, a general sequestration law was passed in October, 1777. This law provided that debts due British subjects from citizens of Virginia could be paid into the loan office of the state,

[36] Legislative Petitions, No. 89.

[37] Hening, *Statutes of Virginia,* IX. 286-89; *Journal of the House of Delegates, May 1777,* p. 141.

[38] See the report of the Treasurer in *Journal of the House of Delegates, October 1776,* pp. 100, 124; also *Journal of Senate, October 1777, January 8, 1778.*

[39] Hening, *Statutes of Virginia,* IX. 283.

and the auditor would give the debtor a certificate of payment that would discharge the debtor from all future obligations to the creditor.[40]

The clause providing for the payment of British debts into the loan office was as beneficial to the planter as it was obnoxious to the merchant. Virginia citizens owed between two and three million pounds sterling to British merchants.[41] Obviously, if these debts could be paid in paper money, now worth one-third its face value and depreciating each day, the gain to the individual would be great. For the state, the possible advantages would be equally important; it would increase the demand and the value of the currency, and the sums paid into the treasury would provide a sinking fund. Liabilities of the citizens would be transformed into assets of the state.

The first payment into the loan office under this law was made on March 2, 1778, when Paul Carrington paid £324 in paper to discharge a sterling debt for the same amount due to James Campbell and Company.[42] At that time the paper money of Virginia stood five to one.[43] Between March

[40] *Ibid.*, pp. 377-80.

[41] Jefferson, *Writings,* IV. 55. This estimate by Jefferson of the amount due from Virginia is probably partial to the debtors, of whom he was one.

[42] Auditor's Cash Book, 1777-1778, p. 107.

[43] Hening, *Statutes of Virginia,* X. 460-68.

and November, 1778, £27,022 in paper with a specie value of £5404 was paid into the loan office to discharge debts. By January 1, 1778, only £41,706 had been paid in,[44] too small an amount to render material aid to the financial system. Taxes collected in 1778 amounted to approximately £150,000, and £445,000 of paper money was issued.[45] In 1779, £92,552 was paid into the loan office to discharge British debts. However beneficial to debtors who made the payments, it caused but a ripple in the state finance. During the same year, £1,690,000 of paper money was issued;[46] the value of the currency fell from six to one to forty to one.[47] The sum received at the loan office did nothing to check the depreciation. In January, 1780, the currency was rated at forty-two pounds of paper for one pound sterling; by May it fell to sixty. The impossibility of forcing the currency as legal tender was realized. Already, in May, 1779, the laws imposing penalties upon those who asked more for gold than paper had been repealed.[48] The sound money in the state had long been withheld from circulation.

[44] Auditor's Day Book, *passim*.

[45] *Journal of the Senate, October 1778*, p. 39.

[46] Auditor's Day Book, *passim; Journal of the House of Delegates, October 1779*, p. 116.

[47] Hening, *Statutes of Virginia*, X. 460-68.

[48] *Ibid.*, p. 125.

A petition signed by four hundred citizens of Berkeley and Frederick Counties protested against creditors who, despite all laws, refuse to accept paper.[49] The small amount paid into the loan office under the law of October, 1777, was insufficient to restore the financial stability of the state. The benefits of the payments became smaller to the state as the money depreciated, although the payments increased. The hopelessness of the situation and the possibilities of future difficulties led the assembly of May, 1780, to repeal the law providing for the payments into the loan office.[50] No payments were made after May 23, 1780.

From the first of January, 1780, until May, when the payments were stopped, £139,307 were paid to the state, £119,522 being paid in April and May, when one pound sterling was equivalent to sixty pounds of the Virginia currency. In all, £273,554 of paper money, with a sterling value of £15,044, was paid into the treasury to discharge British debts. Five hundred and twenty-two payments were made by nearly as many persons, three hundred and thirty-seven falling in the five months of 1780, when the law was in operation.[51]

[49] Legislative Petitions, No. 332; *Journal of the House of Delegates, May 1779,* p. 37.

[50] Hening, *Statutes of Virginia,* X. 227.

[51] Auditor's Day Books, *passim,* 1778-1781. See also a report in Public Record Office, C. O., 5, 1344, Library of Congress Transcripts.

Jefferson wrote Jones and Farrell, merchants of Bristol, that at the beginning of the Revolution he had sold lands and, when the bonds became due, he was paid in money "that was not worth oak leaves." This money Jefferson paid into the Virginia loan office to discharge a debt due these merchants. He promised to repay the amount.[52] An interesting list could be made of Revolutionary patriots who took advantage of this opportunity to pay their debts.[53] The state received sums due to thirty-three mercantile houses; the names of a number of individuals, some of them doubtless factors for merchants, appear on the treasury books. The debts had been contracted for slaves, thorough-bred horses, manufactured articles, loans, and sums advanced for the education of planters' sons in England.[54] After the Treaty of Paris, these debts and their Revolutionary payment gave much trouble to debtor and creditor.[55]

A second feature of the law of October, 1777, provided for the sequestration of real and personal property in Virginia belonging to British

[52] Jefferson, *Writings,* IV. 201.

[53] See above, pp. 27-28.

[54] Auditor's Books, *passim.* The receipt books for sums paid into the auditor's office under this law were lost during the invasion in 1780; only the entries in the Auditor's Cash or Day Book remain. A careful search of each page of these books for the period has been made.

[55] See below, pp. 130, 132, 161-176.

subjects. This was no new policy. By a resolution of the assembly, June 15, 1776, the property of Lord Dunmore had been seized and placed in the hands of commissioners. The personal property was sold at public auction and his farms leased.[56] John Wilkie was convicted of disloyalty in May, 1776, by a special court appointed by the committee of safety in Norfolk, and his property was sold for two hundred and forty-two pounds.[57] The law of October, 1777, provided that all real and personal property of British subjects should be entrusted to commissioners for each estate. Any profits derived from the management of the estate were to be paid into the state treasury; all unpaid rents due to British subjects went to the state. Suits where British subjects were plaintiffs and American citizens defendants were to be suspended, but if American citizens were plaintiffs and British subjects defendants, the court should proceed to trial.

[56] The commissioners in Berkeley County sold the personal property of Dunmore on October 4, 1776 (including eleven Negroes, twenty-one cattle, "two old horses and one mare," provisions, and some household furniture) for £1118. Edmund Randolph and John Blair, commissioners in Williamsburg, hurried up the sale, that it might take place when the assembly was in session. Dunmore's library, silver candle sticks, furniture, carriage, etc., were sold for £2572. *Porto Bello* and the *Farm* were leased to Dr. James Carter. *Journal of the House of Delegates, October 1776,* pp. 39, 83, 131.

[57] *Virginia Magazine of History and Biography,* XV. 290.

This act did not disturb the title of the British subject, but sequestered his property to the use of the state. When seven persons joined the British in May, 1778, the governor ordered their property to be sequestered according to this act.[58]

In October, 1778, forty citizens of Hampton, near Norfolk, petitioned that property of Osgood Hanbury, which had already been sequestered, be annexed to the town and sold. The Hanbury property included a desirable water front, which local traders were eager to possess. The House of Delegates deferred action on the petition until the following May.[59] This desire of some citizens to obtain possession of the property of the loyalists was natural and widespread. They exerted their influence on the next session of the assembly. The estates, they indicated, were not successfully managed by the commissioners appointed under the sequestration law of 1777; the profits were small; the property depreciated for want of proper attention and was liable to destruction; prices were good, and the estates should be sold. If the state at any time in the future decided to restore the estates, the money for which they were sold could be paid to the former owners. Moreover, the funds to be derived from the sale would

[58] *Virginia Magazine of History and Biography*, XXX. 289.
[59] Legislative Petitions, No. 224.

be of great benefit to the depleted treasury of the state.[60] Thomas Jefferson was appointed to draw up a bill to provide for the sale of the sequestered property. He reported his draft on May 29, and from that date until the end of the session it was the chief topic of debate in both branches of the assembly. After a division between the house and the senate, they reached an agreement the last day of the session and enacted a bill for the sale of loyalists' estates.[61]

This law vested in the commonwealth property in Virginia belonging to British subjects—the personal property by forfeiture, the real property by escheat. The process of escheat followed closely the practice of English law. Escheators were appointed in each county, except in the Northern Neck, by the governor upon recommendation from the county court. In the Northern Neck the sheriff performed the duties of escheator. The escheator was to hold a court of inquest at a convenient place, impanel a jury, and take evidence against alleged British subjects. A return of the finding of the county court should be made to the

[60] By the end of 1778 nearly £2,000,000 of paper money had been emitted. Less than £250,000 had been raised by the sheriffs; the land office had yielded the state about £50,000. Any deficiency between receipts and expenditures was made up by the issue of paper money.

[61] *Journal of the House of Delegates, May 1779,* pp. 32, 77. *Journal of the Senate, May 1779,* p. 53.

clerk of the general court, and these returns should remain in the general court one year, during which time the estates sequestered were in possession of the escheators. Two months after the year had elapsed, if no successful appeal was made from the finding of the county court of inquest, the clerk of the general court notified the escheator, and he proceeded with the sale of the property. The sale was public, and two appointed commissioners were present to certify the returns of the sale to the auditor. The purchaser of the property received a deed from the state land office, where all deeds of purchasers of British estates were recorded with titles to unpatented lands.[62] The

[62] November 27, 1777, Congress recommended to the states that the real and personal estates of such persons as had forfeited their right to protection be seized and sold and the receipts invested in Continental Loan Office certificates (*Journal of the Continental Congress,* IX. 971), Rhode Island confiscated the property of certain disaffected persons, naming them in the act; North Carolina, in November 1777, confiscated the property of loyalists and of British merchants. Georgia passed a confiscatory act, March 1, 1778; Pennsylvania passed such an act, March 6, 1778, and Connecticut, on May 14, 1778. In New Hampshire, property was confiscated by an act of November 28, 1778, and New Jersey followed, December 11. In New York, real estate was held in trust, as it was under the sequestration act in Virginia, until October 22, 1779, when an act was passed attainting fifty-nine persons, whose property was to be sold. In Virginia, no bills of attainder were passed (except in the case of the renegade Josiah Philips—see *American Historical Review,* I. 445). In England, when property was confiscated, it was customary to do so by process of *office found.* An inquest was held by an escheator over the property in question, and the title was declared to lie in the crown. Sometimes, as in the case of an act of parliament in the reign of Philip and Mary declaring the property of Sir Thomas Wyatt to be vested in the crown, con-

deed made by the land office in consequence of the sale was to be good against all claims whatsoever, but the former owner might claim the money paid to the commonwealth for the estate.[63] The escheator received three per cent. of the receipts from the sale of the first thousand pounds and one and one-half per cent. thereafter.

The property of all "real British subjects" came within the meaning of this act. The term "real British subjects" included all British subjects who were absent from the United States on April 19, 1775, and had given no evidence since that time of their allegiance; all persons who by overt act had adhered to the enemy; all persons who were in the United States on April 19, 1775, but who left before the commencement of the act of Octo-

fiscation was completed without any process of *office found.* Such instances were the exception. In the case of Wyatt, it was specifically stated that the confiscation was to be without the process of *office found.* Seizure of the property of those guilty of treason was early established in English law. John and his successors insisted upon it when they enriched themselves by seizing the *terrae Normanorum,* the English lands of those who preferred to be Frenchmen rather than Englishmen, when the victories of Philip Augustus forced upon them the choice between the two nationalities (Frederick Pollock and F. W. Maitland, *History of English Law* [Sec. Ed.], I. 292, 332; II. 498). The English process was followed closely in the seizure of property in Virginia (Josiah Tucker, *Blackstone,* II. 60). In North Carolina and other states, property was seized and sold by virtue of an act of assembly without any process of *office found.* For an analysis of the legislation against the loyalists in the different states, see C. H. Van Tyne, *Loyalists in the American Revolution,* appendixes B and C.

[63] Hening, *Statutes of Virginia,* X. 66-70, 115-117.

ber, 1776,[64] and all who were ordered to depart under the Statute Staple directing merchants to leave Virginia. Any person forfeiting property in another state for loyalism was to have his property in Virginia seized and sold.[65]

Escheators proceeded to hold courts of inquest over the property of British subjects in the fall of 1779. On October 7 an inquest was held in Isle of Wight County, and the property of ten merchants was vested in the commonwealth.[66] Inquests were ordered to be held over the property of George William Fairfax, who had never taken the oath of allegiance.[67] The law of May, 1779, with its sweeping classification of "real British subjects," condemned the property of every absentee landlord who had not proved that his heart was with the patriots; although absent from Virginia, one could not be a neutral in the conflict. Petitions from the absentee or his agent prayed for one reason or another that his property be spared. John Baylor,[68] Archibald McCall,[69] and Lucy and John Paradise[70] sent petitions to the assembly in October, 1779, declaring

[64] See above, pp. 75-76.
[65] Hening, *Statutes of Virginia*, X. 70-71.
[66] *William and Mary College Quarterly*, VIII. 272.
[67] *Journal of the House of Delegates, October 1776*, p. 25.
[68] *Ibid.*, pp. 17, 31.
[69] *Ibid.*, p. 27, Legislative Petitions, No. 304.
[70] *Journal of the House of Delegates, October 1779*, p. 20.

their allegiance to Virginia, pleading extreme circumstances or unavoidable absence from the commonwealth, and praying that their estates be exempt from the law. Sarah Jordome[71] and Elizabeth Ramsey[72] had gone to England to educate their children and asked that their estates be saved. Craven Peyton, manager of Lord Fairfax's estate, asserted that the inquest held over the property of Denny Fairfax was in error; Fairfax had gone to England in 1773 to visit relatives and intended to return to Virginia. He requested that the assembly pass an act to prevent the sale of the property.[73] Ebenezer McHarg, David Ross, and John Fisher asked to be permitted to take the oath of allegiance and save their property.[74] "Sundry inhabitants of Loudoun County" protested against the law of escheat as indiscriminate; they thought the commonwealth should go no further than sequestration.[75] A petition was sent from Caroline County to the assembly objecting to the policy of selling the estates; the petitioners thought the policy was unjust and would lead to difficulties in the future.[76]

[71] *Ibid.*, p. 4.
[72] *Ibid.*, p. 15.
[73] *Ibid.*, pp. 62-63. Legislative Petitions, No. 413.
[74] *Journal of the House of Delegates October 1779*, p. 27.
[75] *Ibid.*
[76] *Ibid.*, p. 10. Neither the petition from Caroline nor Loudoun Counties are among the legislative petitions.

Governor Jefferson cautioned the assembly not to depend too much upon the receipts from the sale of British estates as a source of revenue. Petitions from absentee landlords indicated that the plan of escheat would involve much litigation, and probably the titles would not be clear for a generation.[77] The House of Delegates, in October, 1779, undertook to solve some of the problems connected with escheat. A committee of seven (later increased to fifteen), including Patrick Henry, Thomas Nelson, and George Mason, investigated the problem of selling British estates, examined the petitions to the assembly, and, on November 16, recommended changes.[78] The law was so amended as to confirm all *bona fide* purchasers of British estates before May, 1779; any citizen of Virginia holding a mortgage on sequestered British property could file a petition in chancery and stop the sale. The amended law also provided that anyone who had left Virginia and had gone to England for education or to join his family could have his property restored if he would return and claim it before two years had elapsed or, in case of a minor, before he reached his majority. That sales might be hastened, it

[77] Jefferson, *Writings*, II. 265.

[78] *Journal of the House of Delegates, October 1779*, pp. 16, 32, 76, 89, 101.

was provided that the findings of the court of inquest were to remain in the general court one month, not one year as provided in the law of May, 1779.[79] The purchaser's title, derived from the commonwealth, was at all time to be valid against any claim whatsoever. If at any time in the future the findings of the court of inquest should prove defective, the former owner could lay claim only to the proceeds of the sale.[80] In anticipation of immediate returns from the sale of sequestered estates, one and a half million pounds was appropriated out of the net receipts to meet the requisitions of Congress.[81]

All the certificates of British sequestered property kept among the papers of the council "were lost during the British invasion;"[82] but there remain three sources to indicate the extent of the sales and the amount of the receipts. First, and of most importance, are the books in the land office, where all sales of sequestered lands were recorded. Before 1814 the land office kept no separate records of the sales of escheated property, but kept the papers for escheated lands on a separate

[79] Hening, *Statutes of Virginia,* X. 154.

[80] *Ibid.,* p. 201. The law was evidently framed by George Mason. *Journal of House of Delegates, October 1779,* pp. 120-29.

[81] Hening, *Statutes of Virginia,* X. 165-71.

[82] Jefferson, *Writings,* III. 37. *Calendar of Virginia State Papers,* VII. 43-57—a report of the papers destroyed.

file until the grants were issued. When the grants were issued, they were recorded with the grants for unappropriated lands.[83] This method of recording grants makes it necessary to go through all of the land books, page by page, and, after most careful examination and tabulation, it is almost impossible to estimate exactly from these alone the amount of property sold under the sequestration act of 1779. The land office issued no grants for escheated property in many of the counties. Second, the entries in the auditor's books indicate the amount paid into the Virginia treasury by the escheators. The escheators in a majority of the counties made no returns whatsoever to the auditor. It is possible escheators sold loyalist property, collected for the sales, but made no returns or irregular returns. Yet it is altogether probable that the commonwealth sold no loyalist property in a majority of the counties; the auditor's books check fairly accurately, but not in all instances, with the records in the land office. Thirdly, there are returns from some of the county escheators, incomplete from all the counties except one (Norfolk County), where the number of loyalists was greatest. Together, these three

[83] *Letter from the Register of the Land Office, December 13, 1820.* Pamphlet in the Virginia State Library.

sources give an all but complete list of the loyalist property sold in Virginia.

The sale of sequestered property began in 1779. On December 13 of that year, Thomas Hardy, escheator in Isle of Wight, sold at public auction for £67,377, Virginia currency, the loyalist property condemned by a court of inquest in October.[84] In February and March, 1780, property in Mecklenburg County was sold for £29,023.[85] In August Matthew Godfrey, escheator in Norfolk County, sold the real and personal property of fifty loyalists for £987,239; additional sales in May, 1783, increased the returns for escheated property in that county to approximately £1,000,000.[86] The escheator from Amherst paid £454,709 into the auditor's office from the sale of loyalist property;[87] the escheator from Gloucester paid in £220,463;[88] from Fluvanna, £465,721;[89] and from Lancaster, £172,055.[90]

[84] Auditor's Papers, No. 15. The property formerly owned by Oswald and Company brought £7040—all of its real estate in Smithfield. A house and lot of John Williams in Smithfield sold for £1010; property of Andrew Lynn in Smithfield brought £16,000; a lot belonging to Hunter and Blair, £150; John Goodrich's plantation and personal property, £39,200; real estate of John Hyndman, £4573, and the personal property of John Lynn, £104.

[85] *Ibid.*, Dinwiddie and Company, Cunningham and Company, and Andrew Spiers, all merchants, were the heaviest sufferers.

[86] *Ibid.*

[87] Auditor's Cash Books, *passim*.

[88] *Ibid.*

[89] *Ibid.*

[90] *Ibid.*

The value of the personal property of loyalists forfeited to the commonwealth was insignificant. Merchants banished under the Statute Staple were permitted to remove whatever property they could; the chattels they did leave behind deteriorated in value or were misappropriated during the period of sequestration. In Norfolk County, for example, of the £1,000,000 paid into the treasury by the escheator, only £50,212 was for personal property; £48,910 of this came for the sale of Negroes that had been left on the plantations. Occasionally the escheator's returns note an office desk, a chair, picture, wagon, or drinking glasses.[91]

An examination of the records in the land office indicates that prior to 1790 that office issued titles for 34,066 acres of land escheated to the commonwealth as British property.[92] The greater part of the escheated real property was in towns and villages—warehouses, stores, dwelling houses and undeveloped lots, formerly the property of British merchants who had joined Dunmore or who had left Virginia when the Statute Staple was put in force. In Norfolk County ninety-two deeds were issued for city property and nineteen

[91] Auditor's Papers, No. 15. (A box of papers on escheated property.)

[92] Patent Books, A-Z, *passim.*

deeds for rural property.[93] There are records in the land office of approximately one hundred and fifty lots sold in Blanford, Smithfield, Suffolk, Alexandria, Manchester, and Petersburg, and the return from these sales form a large part of the receipts from the counties in which these towns are located.[94] Paul Loyall purchased one and a half acres and a building in Norfolk, formerly the property of William Orange, for £50,000.[95] Henry Lee purchased four lots in Dumfries, formerly the property of Cunningham and Company, for £13,320.[96] John Goodrich's city property in

[93] Auditor's Papers, No. 17. This box of papers contains complete accounts of sequestered property in Norfolk. Among the British subjects whose property in Norfolk County was sequestered and sold, were: John Greenwood, £51,500; Andrew Stephenson, £1100; Thomas McKnight, £1450; William Farrar, £12,900; Benjamin Knight, £8500; Andrew Sprowle, £241,380; Willoughby Morgan, £500; Robert Gilmore, £11,200; James Campbell, £15,637; Niel Jamieson, £37,100; Talbot Thompson, £6000; Thomas Applewhite, £30,000; James Dunn, £2200; James Davidson, £10,700; Jonathan Flibeck, £28,650; Joshua Hodges, £850; Thomas Farrar, £1600; John Crammond, £9200; William Chisholm, £43,850; William Orange, £98,200; James Campbell Calvert and Company, £9000; John Hardy, £4600; William Johnson, £2600; John Ballatine, £5100; Collins Wray, £9900; John Agnew, £47,400; Roger Stuart, £16,400; John Goodrich, Sr., £60,150; Robert Shedden, £67,200; James Miller, £14,150; Benjamin Bannerman, £29,660; Thomas Stewart, £34,962; William Rankin, £4500; Alexander Montgomery, £4500; John Goodrich, Jr., £4000; John Brown, £3400; James Hodges, £2200; John Greenwood, £1500; Robert Gilmore, £4000; George and John Bowness, £53,410; John Ewing, £10,100.

[94] Auditor's Papers, No. 17. Patent Books, *passim*.

[95] Patent Book, L. 524.

[96] *Ibid.*, A, 438.

Norfolk was sold to Richard Nester for £57,000;[97] Thomas Allmand purchased the Goodrich plantation in Nansemond County for £22,000, and Andrew Mackie bought the plantation in Isle of Wight for £36,000.[98] The Norfolk property of Andrew Sprowle, President of the Virginia Merchants Association, was sold to twelve persons on August 18, 1780, for £239,220.[99] Cunningham and Company had property in Chesterfield, Mecklenburg, Dinwiddie, Prince William, Henrico, and Lunenburg Counties sequestered and sold. It was the property of the foreign-born colonial merchant and not the property of the Virginia planter that was sequestered and sold during the Revolution. The auditor's cash books have entries totalling £3,041,167, paid into the state treasury for the sale of escheated property, real and personal.[100] With the exception of £13,126, this money was paid to the commonwealth prior to 1782 in depreciated paper currency; the benefits to the state were small.[101]

[97] Patent Book, K, 113.
[98] Auditor's Papers, No. 17.
[99] *Ibid.*
[100] Auditor's Books, 1779-1795, *passim.*
[101] By April 5, 1780, county escheators had paid £721,000 into the treasury; from May to August, 1780, £1,135,106, and during the last five months of 1780, £954,653 were paid into the treasury, making a total of £2,811,744 prior to January 1, 1781. In 1781, £148,330; in 1782, £9400; in 1783, £6595, and in 1785, £131 were paid to the auditor by the county escheators and sheriffs for the sale of escheated property (Auditor's Books).

Not all of the escheated property was sold. The act providing for the sale of loyalist property stipulated that escheated real estate in Richmond was to have the title of the commonwealth established by the process of *office found,* and the property was to be used for such purposes as the state might direct.[102] The property of James McDowell was set apart for the auditor's office, that of French Crawford for the treasurer's office.[103] The building of Ninan Ninzies was leased to Penet, Windel and Company as a repair shop for the ordnance department;[104] until the capitol was completed in 1789, the assembly met in a house that had belonged to Cunningham and Company.[105]

In addition to property set apart for the state government, other escheated estates were given to schools. The lands in Kentucky belonging to Robert McKensie, Henry Collins, and Alexander McKee, with all other escheated lands in Kentucky, not to exceed twelve thousand acres, were granted to Transylvania University.[106] Four hundred and twelve acres in Prince Edward

[102] Executive Papers, October, 1786. Hening, *Statutes of Virginia,* X. 67-71.

[103] Executive Papers, October, 1786.

[104] *Journal of the House of Delegates, October 1779,* p. 108.

[105] *Journal of the House of Delegates, May 1783,* p. 91.

[106] Hening, *Statutes of Virginia,* X. 287; XI. 282, 287.

County, formerly the property of Alexander Spiers and Company, British merchants, were given to Hampden and Sidney College.[107] The lands of Robert Bristow in Prince William County escheated to the commonwealth in 1779 and were wastefully administered by the state for fifty years; they were eventually vested in the Literary Fund and by that fund were divided and sold in 1834.[108]

Other sequestrations and sales involved disputes and litigation. The real and personal property of John Hamilton, who had joined the British in 1775, was escheated and offered for sale. Christopher Godwin petitioned the House of Delegates that the property in question did not belong to Hamilton but had been leased to him by the petitioner. The property was restored to Godwin.[109] Lands granted to John Connolly by Lord Dunmore were sequestered in 1780. Immediately after the war, John Campbell, who had been a prisoner in the British lines, returned and claimed that he and Joseph Simons owned part of the land and held a mortgage against Connolly for the remainder. The state ordered Connolly's share to be

[107] Hening, *Statutes of Virginia,* XI. 392.

[108] *Acts of Assembly, 1822-23,* p. 86. *Acts of Assembly, 1833-34,* p. 25.

[109] Hening, *Statutes of Virginia,* X. 207. *Journal of House of Delegates, October 1779,* pp. 34, 72, 94. Legislative Petitions, No. 407.

sold and the mortgage of Campbell and Simon paid.[110]

The assembly was petitioned to restore other estates that had been sequestered, or, if sold, to reimburse the former owner according to the provisions of the law of October, 1779. Walter King Cole was permitted to "heir" the property of Walter King that had been escheated.[111] The lands of John Harmer had been sequestered and his slaves seized. John Harmer, pleading his Virginia citizenship, was given possession of the lands and was paid for the slaves that had been sold.[112] The lands of Samuel Gist, a British subject, had escheated to the state, but were restored to Mary Anderson, his daughter and heiress.[113] The assembly stopped the sale of lands belonging to Richard Goodall, in Caroline County, and directed those lands that had not been sold be given to Parke Goodall; Parke Goodall was reimbursed for the lands disposed of by the state.[114] The escheated estate of John Kerr, a British subject, was permitted to go to his grandchildren and later was restored by law to Edward Kerr, a son, when he took the oath of allegiance to Virginia.[115] The

[110] Hening, *Statutes of Virginia,* XI. 227, 474, 321; XII. 395.
[111] *Ibid.,* XI. 35.
[112] *Ibid.;* also X. 371.
[113] *Ibid.,* XI. 55.
[114] *Ibid.*
[115] *Ibid.,* p. 148; XII. 681.

estates of John Mills, of Fairfax County, and James Buchanan, of Falmouth, British merchants, were seized by the state when the owners died. Each estate was later restored to executors to support the needy widows.[116] John Sutton came from Great Britain and took the oath of allegiance upon the death of his uncle, James Connell, of Alexandria, and was permitted to inherit the estate.[117] The commonwealth purchased the escheated property of Edward Baine. In May, 1781, a law was passed providing that the property should be restored and the owner indemnified for the use of timber if Baine would take the oath of allegiance.[118]

Numerous claims were brought against the estates that were sold. James Maxwell and Richard Evers Lee filed claims against Andrew Sprowle for one thousand pounds.[119] The *Journal* of the House of Delegates is sprinkled with claims brought against the Goodrich estate. Mary Hurt presented a claim of five hundred pounds against the sequestered estate of John Bowness.[120]

A bill to suspend the act on escheats and forfeitures was drafted by Nicholas, Hunter, and

[116] *Ibid.*, XI. 155; XII. 203.
[117] Hening, *Statutes of Virginia*, X. 372.
[118] *Ibid.*, p. 452.
[119] *Ibid.*, XIII. 211, 219.
[120] *Ibid.*, p. 82.

Henry and presented to the House of Delegates on December 1, 1781, six weeks after Cornwallis's surrender. It was discussed in the committee of the whole on December 14 and rejected.[121] Two weeks later a bill was passed appropriating all funds derived from the sale of sequestered estates for the redemption of the depreciated soldiers' certificates.[122] In October, 1784, in conformity with the Treaty of Paris, the assembly passed an act declaring there should be no future confiscation, but expressly provided that this act should in no way affect the sale of lands that already had been sequestered.[123]

The provision of the law of October, 1784, which safeguarded to the commonwealth lands already sequestered but not sold, protected Virginia's claim to the Fairfax estate. The Fairfax heirs owned lands, approximating 5,282,000 acres, between the Rappahannock and the Potomac Rivers. Lord Thomas, sixth Lord Fairfax, held one sixth of this property in fee and, as the heir to the Fairfax estate, held the remaining five-sixths by entail. Although Lord Fairfax had been resident in Virginia for nearly half a century prior to his death, he did not subscribe to the

[121] *Journal of the House of Delegates, October 1781,* pp. 24, 36, 39.
[122] Hening, *Statutes of Virginia,* X. 462.
[123] Hening, *Statutes of Virginia,* XI. 446.

oath of allegiance. From his land office at Greenway Court, near Fredericksburg, he granted lands throughout the Revolution, remained in undisturbed possession of his property, and his tenants were permitted to deduct from their taxes the quitrents paid to him. He died two months after the surrender of Lord Cornwallis, bequeathing his one-sixth interest held in fee to his nephew, Denny Martin, then residing in England. The remaining five-sixths interest held by entail went to Thomas, Lord Fairfax's brother, Robert, seventh Lord Fairfax, likewise an Englishman.[124]

Thomas, Lord Fairfax, the non-juring Virginian, was unmolested by the Virginia assembly, but his heirs, Englishmen, were not so fortunate. In October, 1782, the assembly, fearing the quitrents might fall to alien enemies, sequestered the rents in the Northern Neck into the treasury of the state.[125] In 1785 an act of the assembly abolished these quitrents and directed that the land books in the proprietor's land office be moved to the state land office. All grants and surveys based on entries in the proprietor's office were to be issued by the state land office, and unappropriated lands in the Northern Neck were to be

[124] E. C. Broome, *Northern Neck Lands,* an accurate and interesting study of the Northern Neck.

[125] Hening, *Statutes of Virginia,* XI. 128.

granted by the state on the same terms as other unpatented lands.[126] The land office at Richmond, by virtue of this law, resumed the granting of lands where it had been left off upon the death of Thomas, Lord Fairfax.[127]

Denny Martin Fairfax, alias Denny Martin, was not disturbed by the law of 1782 in his possession of the Manor of Leeds, the South Manor, and several smaller estates, amounting in all to approximately two hundred and twenty thousand acres, as these estates had been surveyed and were appropriated lands. The heir, however, refused to recognize this law of 1782 as sequestering either the appropriated or unappropriated lands, but merely recognized it as a law abolishing quit-rents due to him from his estate. Nothing was done by the state to complete a title to any of the lands by the process of *office found,* and, except in so far as the law directing the books to be removed from the proprietor's land office to the land office of the state divested the proprietor of the title, the lands legally belonged to the proprietor. The Treaty of Paris prohibited any future

[126] *Ibid.,* XII. 112.

[127] Northern Neck Land Books, *passim.* Virginia continued to keep the record of lands in the Northern Neck separate from the lands in the west. The only change in the machinery of the execution of the grant was that the governor, and not the proprietor, signed the grants.

confiscated of loyalist property, and, by the law of October, 1784, Virginia gave a pledge not to violate this part of the treaty. The Fairfax heirs, contending that the law of 1782 had not sequestered their property, but had only abolished the quitrents and moved the land office and that the property could not be sequestered or confiscated without violating the Treaty of Paris and the Virginia law of 1784, continued to grant titles to the unappropriated lands. The state, contending that sequestration of the disputed lands had begun before the Treaty of Paris and therefore that the obligations of the treaty did not extend to the Fairfax estate, proceeded to grant the unappropriated lands from its office in Richmond. The proprietors took steps to evict anyone who claimed parts of the disputed lands by a title from the state.

Title to lands in the Northern Neck remained in this unsettled condition until 1792. In that year renewed agitation against the British was occasioned by the hearing of the British debt cases in the recently established federal courts.[128] In March, 1793, a contributor to the *Virginia Sentinel and Gazette,* writing under the pseudonym *Crito,* appealed to the Virginia assembly to

[128] See below, p. 163f.

have the title to the vast Fairfax estate investigated. The writer complained that the property was held by an alien enemy, that from four to six thousand pounds yearly had been paid to the late Lord Fairfax, and that, during his life, the proprietor had collected no less than two hundred thousand pounds from inhabitants of the Northern Neck. The Revolution was incomplete while such privileged inequalities remained. *Crito* attempted to arouse his fellow-citizens by anticipating the day when these vast stretches of land would form several congressional districts controlled by loyalist landowners, a bulwark of toryism and the stronghold of British interests.[129] Such an appeal was certain to arouse republican Virginia.

Recent settlers on the disputed lands, many of them Germans, were anxious to have their claims to the lands quieted; they petitioned the Virginia assembly in 1793 for relief. The assembly of November, 1793, requested the governor to investigate the title to the Fairfax lands in the Northern Neck and to take the proper steps to quiet all claims against the state.[130] The executive called upon the state and county courts to

[129] *Virginia Sentinel and Gazette,* March 11, 1793.

[130] *Journal of the House of Delegates, November 1793,* pp. 129, 131.

make a report of all escheated property. Twenty-eight escheators were appointed during the first six months of 1794 to fill offices that in some instances had been vacant for several years, and each escheator was instructed to proceed with escheats that had begun under the act of October, 1779;[131] circular letters were sent to all escheators calling for complete reports on property that had escheated.[132] Robert Brooke, the attorney-general, was directed to aid escheators in establishing the title of the commonwealth.[133] Sequestration and confiscation were taken up with vigor where they had been left off a decade before. Jefferson and his associates were forming the anti-British, Republican party.

Proceeding upon the basis that the law of 1782 sequestering the quitrents in the Northern Neck and directing the removal of the land books to Richmond was the beginning of escheat, courts of inquest were held over property claimed by the Fairfax estate in Frederick, Fauquier, Shenandoah, Fairfax, and Berkeley Counties.[134] In Fauquier, where an estate of ninety thousand acres was involved, the verdict was for the com-

[131] Council Journals, XXIII. 71-217, *passim.*

[132] *Ibid.*, p. 53.

[133] *Ibid.*, p. 62.

[134] *Calendar of Virginia State Papers,* VII. 4, 5, 131, 158, 255, 286, 296, 297, 352, 353, 470.

monwealth.[135] Denny Martin Fairfax took an appeal to the district court, and, when that court upheld the findings of the county court of inquest, he carried his appeal to the Virginia Court of Appeals. In Frederick County, the decision of the local court of inquest was against the commonwealth; in other counties, the courts of inquest could reach no decision.[136] Following the appeal by Denny Martin Fairfax from the decision in Fauquier County to the Virginia Court of Appeals, the governor in council advised the escheators "in those counties in which any other lands of the said Denny Fairfax may be lying not to proceed to take inquest thereon" until a decision is reached by the courts.[137] Republican antipathy to the courts began before 1800.

In the meantime, Denny Martin Fairfax had continued to grant titles to unappropriated lands in the Northern Neck. The legal contest became a three-cornered one: The Fairfax heirs claiming under old charters and grants, the state claiming under Revolutionary confiscation and sequestration laws, and the settlers claiming by a title from one of the above or by occupancy. The situation was somewhat clarified when a land

[135] *Ibid.*, pp. 352-53.

[136] *Ibid.*, pp. 131, 296, 297.

[137] Council Journals, XXIII. 153; Governor's Letter Book, 1794-1800, pp. 9-11.

syndicate, formed by Robert Morris of Philadelphia and including Morris' son-in-law, James Marshall, James Marshall's brother, John Marshall, Rawleigh Colston, a brother-in-law of the Marshalls, and Henry Lee, Governor of Virginia, in 1793 or 1794, arranged for the purchase of the interest held in fee by Denny Martin Fairfax. The result of the tangle was a compromise between the state and the land syndicate claiming under the Fairfax title. It was agreed that all lands that had not been appropriated before 1793 were to be ceded to the state, and the state was to relinquish all title to lands that had in any way been appropriated by the Fairfax heirs prior to 1793.[138] This compromise, effected in 1796, settled the dispute to all practical purposes. The state acquired little or no land by this arrangement, for the Fairfax heirs or squatters had surveyed, granted, or settled upon practically all the lands claimed by the Fairfax estate. The beneficiaries were the settlers upon the land, and the land syndicate that purchased the surveyed but ungranted Fairfax lands for their title was recognized by the compromise as valid, whether it came from the proprietor or from the state. It was a triumph of Republican agrarianism in Virginia.

[138] *Journal of the House of Delegates, November 1796,* pp. 89, 114, 52, 61, 108. Samuel Shepherd, *Statutes at Large,* II. 22.

Later litigation in the United States Supreme Court was important for its political and constitutional significance; the compromise of 1796 settled the practical question of who should possess the land.[139]

Legislation against the loyalists was effective and successful in so far as it purposed to suppress the disaffected. As a source of revenue to the state, loyalist legislation entirely failed. Approximately four million pounds of depreciated paper money was paid into the Virginia treasury for escheated property and British debts, and part of this was later repaid to claimants and debtors. The amount collected from loyalist property was insignificant compared with the paper issues of the state. The real property that was seized and sold was small, especially in the rural districts. Sequestration and sales during and after the war did not evict large plantation owners and make way for a new social and economic order. It is interesting to note that the policy of sequestration and sale of lands in Virginia discriminated against the foreigner rather than against the enemy. With the exception of Andrew Sprowle and the Goodrich family, the property sold belonged to persons whose actual residence was in

[139] See *Hunter* vs. *Fairfax*, 1 Mumford, 218-238. *Fairfax* vs. *Hunter*, 7 *Cranch*, 686-696.

England. The Corbins, the Wormleys, the Byrds, Archibald Ritchie, and Philip Grymes remained in undisturbed possession of their estates. Virginia, however, did come into possession of a vast domain in the west. Many sons of the colonial aristocracy, already in debt, and ruined by the economic upheaval of the Revolution, disposed of their estates in the east and sought their fortunes in this undeveloped country.[140] The winning of the territory in the west, not the confiscation of lands in the east, paved the way for a new social order in Virginia.

[140] Lord Carmarthen complained to John Adams that British merchants were losing debts due from Virginia by migration of the debtors to Kentucky. William Grayson to James Madison, November 1, 1785; May 22, 1786. Letters to Madison, Madison Papers, XIV. Sheriffs defaulted and went west. *Calendar of State Papers,* IV. 595-96.

CHAPTER IV

LOYALISTS AND DEBTS, 1782-1788

The payment of debts into the state loan office and the sale of escheated property in Virginia brought no relief to the finances of the state. The four million pounds of depreciated paper received from these sources failed to check the steady depreciation of the currency that inevitably followed each new issue. When the sales of escheated property began in December, 1779, £2,636,682 of paper money had been issued, with taxes pledged to redeem it. Tax collections were deficient; the currency declined in value so rapidly that even had the taxes been collected, assessments would have been insufficint to meet expenditures. In May, 1780, the amount of paper currency was nearly doubled by an issue of £2,000,000; duties and a tax on windows were pledged to redeem the issue, and, should this prove deficient, the public buildings at the old capital, Williamsburg, were to be sold.[1] In October of the same year, the treasurer was authorized to issue £6,000,000, and if this amount was inadequate, with the

[1] Hening, *Statutes of Virginia*, X. 279.

advice of the governor in council, he could issue an additional £4,000,000. This currency was to pass at the rate of forty to one, and at some future date provisions were to be made for its redemption.[2] The auditor emitted the entire £10,000,000.[3] One and two-thirds million pounds additional was issued to sink Virginia's quota, due to the Continental Congress. The next year the treasurer was driven to extreme measures by the British invasion, and the government printing press issued an additional £36,125,000.[4] The effect was inevitable. In January, 1781, the rate of exchange was seventy-five to one; in April it was one hundred to one; by August seven hundred, and by December one thousand to one.[5] In July, 1781, the currency ceased to be legal tender, and, after November, the state refused to accept it for taxes. The receipts of the state, from October, 1780, to October, 1781, were £60,823,216, including the paper money emitted, but at the end of the year the treasury had a deficit of £3,277,000.[6] In May, 1781, although by law the money was legal tender at forty to one, an army officer, in behalf of his soldiers, complained that no one would accept

[2] *Ibid.*, pp. 347-50.
[3] *Journal of the House of Delegates, November 1781,* p. 60.
[4] *Ibid.*
[5] Hening, *Statutes of Virginia,* X. 462-70.
[6] *Journal of the House of Delegates, November 1781,* p. 60.

the money the soldiers received for their services for more than three hundred to one.[7] Horses were valued at from three thousand to four thousand pounds each, cows at five hundred, pigs one hundred, Negroes at ten thousand.[8] Peter Hogg, in October, complained that all public faith was gone and that the people would not sell provisions to the army for paper money at any price.[9] The county lieutenant of Botetourt wrote to the governor that paper currency was no longer any inducement to anyone to furnish supplies for the army or to enlist in the militia.[10] In October and November, cattle and sheep were driven into Norfolk in large numbers from North Carolina, but the army could buy none for paper money.[11] Colonel John Cropper, county lieutenant for Accomac County, expressed his regret in November that "Mr. Gooter had been compelled to resign" his position as agent for supplying the troops because his salary of four thousand pounds of tobacco, or its equivalent in state money, was insufficient—"it would not feed his wife."[12] A man would rather have five shillings in ready

[7] *Calendar of Virginia State Papers,* II. 86.
[8] *William and Mary College Quarterly,* VII. 41.
[9] *Calendar of Virginia State Papers,* II. 539.
[10] *Ibid.,* pp. 382, 586.
[11] *Ibid.,* p. 546.
[12] *Ibid.,* p. 595.

money for his service than an order to be carried to Richmond for five pounds; "the depreciation has been so rapid that before a man could get his money it was of no value—one hard dollar will purchase more than 1000 of the best state paper in circulation."[13] The men and officers of the Virginia line presented a lengthy appeal to the Virginia assembly in November, complaining of the great hardship of being paid in worthless paper.[14]

Congress, after the emission of $241,552,780, had closed the press, and, to avoid the worthless paper with which the states met their requisitions, called for specific articles by a resolution of October 19, 1779. These articles, when collected, were almost useless to the government; the problem of collecting supplies and moving them to places wanted was an insurmountable difficulty. Continental bills had stood at forty to one in March, 1780, and by the following January were one hundred to one; by May they had ceased to pass as currency.[15] On October 16, 1781, Robert Mor-

[13] *Calendar of Virginia State Papers,* II. p. 595.

[14] *Ibid.,* p. 629.

[15] D. R. Dewey, *Financial History of the United States,* ch. ii, *passim.* By September 10, 1779, Congress had ordered $202,011,660 to be issued. The emissions ordered on February 12, 1776, and November 2, 1776, amounting to $562,780, had not been printed; $41,500,000 had been called in. There were $159,948,880

ris wrote to Governor Nelson that the finances of the country had collapsed; the war no longer could be financed with paper currency; foreign governments refused to aid a government that did nothing to help itself; "specific supplies are at once burthensome to the people and almost useless to the government", and recourse must be had to hard money.[16] On October 19, 1780, the Continental treasurer sent a circular letter to the states reviewing the financial situation and calling upon them to do something to reform the system.[17] The difficulties in Virginia with her own, as well as the Continental, currency amply illustrated the hopelessness of the situation.

In March, 1781, Virginia undertook to place its currency on a sounder basis. An act of the assembly provided that all paper turned in for taxes should be burned, except the two issues authorized in October, 1780.[18] The military invasion of that year necessitated the issue of an endless supply of paper, and the redemption policy was checked when the legislature in May, 1781, repealed a law of the previous year anticipating a

of Continental currency in circulation on September 10, 1779. Approximately $400,000 were issued subsequent to this report. Jefferson Papers, IV. 680.

[16] *Calendar of Virginia State Papers,* II. 550.

[17] *Ibid.,* p. 553.

[18] Hening, *Statutes of Virginia,* X. 400.

general funding system.[19] Realizing the worthlessness of the issue, the legislative body provided that the old money should cease to be a legal tender, except in the payment of taxes, after July 1, 1781. Before the assembly adjourned, it offered a ten thousand pound bounty for every enlistment and authorized an issue of twenty million pounds.

When the assembly met the following October, the money was scarcely worth the paper it was printed upon. It had ceased to be legal tender; tobacco was the medium of exchange. A bill to stop the sale of sequestered estates was rejected, and all future funds arising from these sales were appropriated to redeem military certificates.[20] A plan was adopted for calling in and funding all paper money hitherto issued by the state. On or before October 1, 1782, all holders of the state paper were to present it to the treasury and receive for it loan office certificates at the rate of a thousand to one. The certificates were to bear six per cent. interest and were to be transferable upon assignment.[21] All certificates not funded by October 1, 1782, were to be forfeited. Subsequent legislation extended the time for funding

[19] Hening, *Statutes of Virginia*, X. 413.

[20] *Ibid.*, p. 462. *Journal of the House of Delegates, October 1781*, pp. 24, 26, 39, 55.

[21] Hening, *Statutes of Virginia*, X. 458.

to June 1, 1783,[22] then to December 1, 1783;[23] and later to 1786.[24]

The funding system brought a revolution in Virginia finance. The salary of the treasurer was reduced from five thousand pounds, as fixed in 1779, before the great depreciation, to six hundred pounds; salaries of other officials had a like reduction.[25] Bounties for enlistments were cut, and a scale of depreciation for the redemption of old military certificates was arranged.[26] Foreseeing the perplexities of the taxpayer, taxes were reduced and made payable in flour, hemp, deerskins, or specie.[27] Time for collection of taxes was postponed, and execution of judgments against sheriffs was suspended until 1785.[28]

The repudiation of the currency and the reversion to hard money were as disastrous to the debtor as the inflation of the currency during the war had been to the creditor. The amount of currency in circulation contracted enormously. The balances of the treasurer's report from December, 1780, to December, 1781, were £60,823,216; the

[22] *Ibid.*, p. 133.
[23] *Ibid.*, p. 192.
[24] *Ibid.*, p. 397.
[25] *Ibid.*, p. 493.
[26] *Ibid.*, p. 462.
[27] *Ibid.*, p. 501.
[28] *Ibid.*, p. 462.

balances from April 13, 1782, to November 30, 1782, were £99,948.[29] Between 1782 and 1787 petitions were sent to Richmond by the sheriffs of forty-three counties pleading their inability to collect taxes and asking to be relieved from their bonds; all plead the scarcity of money and the poverty of the people.[30] The sheriff of Buckingham County said his arrears in taxes were "due to no fault of mine but to the poverty of the people."[31] The sheriff of Powhatan put up property for sale that belonged to delinquent taxpayers, but no one would bid upon it.[32] The sheriff of Princess Anne "repeatedly seized the property of those who were in arrears and advertised it for sale, but such was the temper of the people and the scarcity of money, in many cases no one would bid, so that your petitioner, notwithstanding his utmost endeavors, was incapable of completing his collections for 1784."[33] In Mecklenburg the sheriff had distrained property for the taxes of 1783 and repeatedly offered it at auction, "but for want of money there have been

[29] *Journal of the House of Delegates, October 1781,* p. 60. *Journal of the House of Delegates, October 1782,* p. 77.

[30] *Calendar of Virginia State Papers,* IV. 10, 77, 82, 87, 111, 121, 154, 174, 185, 223, 231, 377.

[31] *Ibid.,* p. 87.

[32] *Ibid.,* p. 185.

[33] *Ibid.,* p. 121.

no sales."[34] The sheriff of Louisa petitioned release from his bond for taxes; the property had been seized, but, "on account of the scarcity of specie and the poverty of the inhabitants, it went exceedingly low;" several persons whose property had been distrained came in the night and carried off their slaves, horses, and chattels which the sheriff held, "not that they had been opposed to the payment of taxes but they could not suffer their property to sell for a trifle." In his petition the sheriff of Louisa sent affidavits to show the inability of the people to pay their taxes. William Duval testified that he had purchased lands in Louisa valued at twenty shillings for two shillings an acre.[35] If taxes were paid, payments were in the commodities provided by law and not in specie.[36]

[34] *Ibid.*, p. 154.

[35] *Ibid.*, p. 82.

[36] On July 1, 1782, specie in hand in Albemarle, Amelia, Augusta, Amherst, Bedford, Caroline, Charlotte, Culpepper, Campbell, Fairfax, Fauquier, Fayette, Gloucester, Greenville, Halifax, Hampshire, Mecklenburg, Orange, Pittsylvania, Rockbridge, Spotsylvania, and Stafford Counties was £472; specific articles were 9514 bushels of corn, 3127 bushels of wheat, 3909 bushels of oats, 223 bushels of rye, 5 bushels of barley, and 17,539 pounds of bacon. *Calendar of Virginia State Papers,* III. 203. Among the counties reporting delinquent taxes in 1785 were: Albemarle, £2304; Augusta, £1253; Bedford, £2489; Gloucester, £3752; Henry, £3245; Lunenburg, £1627; Northumberland, £1349; Powhatan, £1121; Rockingham, £2638; Spotsylvania, £1353. The total in arrears was £40,000. *Calendar of Virginia State Papers,* IV. 10. In May, 1787, the solicitor returned judgments against forty-nine sheriffs for delinquent taxes from 1782 to 1786, for a total of £79,952. In his report to the governor, the solicitor stated that in many cases the execution of the judgment against

In order to secure the much coveted specie, soldiers sold their new certificates obtained under the funding system at greatly reduced rates; "they sold them for a mere nothing;" in March, 1782, one soldier parted with a certificate for "£48 for £4 paid in hand."[37] Specie loans on military certificates were difficult to obtain on any terms.[38]

On January 7, 1783, John Ambler, the treasurer, reported to the governor that he had attempted to convert some of the specific articles of the state into money, but "I do not believe there is scarce a man in the city of Richmond who can lay down the sum of £75."[39] Indeed, the happy days of paper money in Virginia had passed.

the sheriffs had been stayed several times. In many instances the property for delinquent taxes had been seized by the sheriff and exposed to sale, "and the executions were returned to the state with the endorsement 'not sold for want of bidders'," *Calendar of Virginia State Papers,* IV. 595-96.

[37] *Calendar of Virginia State Papers,* III. 87.

[38] Hunter, Banks and Company of Petersburg, John Lyne and Company of New Castle, Carter Baxton and Company of West Point, Samuel Beal of Williamsburg, Massachusetts, Alexander Ross, and other merchants purchased many of these certificates and later exchanged them for western lands. *Calendar of Virginia Papers,* III. 80. See Patent Books, 1783-1787. Henry Banks obtained 40,000 acres for treasury warrants, Patent Book, N, 433-60. See also Books P and R, *passim.* The greater part of the lands granted in Virginia subsequent to the Revolution were for military certificates. By 1788, Virginia had granted 2,500,000 acres for Continental soldiers and 3,500,000 for the state militia. *Calendar of Virginia State Papers,* IV. 477.

[39] *Calendar of Virginia State Papers,* III. 417. See also J. Ambler to J. Madison, April 6, 1782, for an account of Virginia finances. Letters to Madison, Madison Papers, XIII.

The conclusion of the war added a new thorn in the flesh of the Virginia debtors. British creditors came to Virginia demanding payment of the debts due to them, not payment in paper money, but in sterling; the planters had no sterling and could not obtain it. Jefferson estimated that the debts due British merchants from Virginia were ten times as great as the money in circulation.[40] Prices were low; surplus tobacco flooded the market, selling from eighteen to twenty-three shillings per hundred weight from 1785 to 1787. Negroes purchased at a hundred pounds each before the war sold for from twenty to thirty pounds.[41]

Hector McAllester, formerly a merchant at Portsmouth,[42] and William Calderhead, a merchant of Norfolk,[43] returned to Virginia to collect amounts due them when Cornwallis entered the state. Hardin Burnley and his partner Brackenridge were at New Castle in January, 1782, upon a similar mission.[44] James Riddle, a former merchant, was driven from the state in April, 1782, when he tried to collect debts. John McLean, Thomas Milner, and John Younghusband,

[40] Jefferson, *Writings,* IV. 202.
[41] *Calendar of Virginia State Papers,* IV. 229, 273.
[42] *Ibid.,* II. 250.
[43] *Ibid.,* III. 56.
[44] *Ibid.,* p. 12.

former merchants, petitioned the assembly in November, 1782, to be allowed to return to Virginia, become citizens, and have their property safeguarded.[45] Congress entered into an agreement with the British at New York to allow them to export tobacco, and when the ships went to Virginia for the product they carried with them many former Virginia merchants who had sought refuge within the British lines during the war. Other British merchants entered under flags of truce and petitioned the governor in council to be allowed to remain to care for their affairs; regardless of the decision of the council, they usually remained until driven from the state by the civil authorities or sometimes by mobs.[46] A law of 1776 forbade alien enemies to enter the state, but the attorney general, when consulted by the governor, gave it as his opinion that this law could not be used to bar the return of these merchants, for they came mostly from New York and Philadelphia, and the term "alien enemy" as used in the law meant "those enemies suspected of treason".[47]

A general "stay law" had been passed in November, 1781, to offset the funding act of that

[45] *Journal of the House of Delegates, November 1782,* pp. 11, 25, 26.

[46] *Calendar of Virginia State Papers,* III. 251.

[47] *Ibid.*

session;[48] the May assembly of 1782, in response to popular clamor, repealed this law and passed a law specifically providing that no debt due a British merchant should be recoverable in any court in the state. If the debt was in the possession of a citizen of Virginia, the plaintiff had to prove that it was obtained by a *bona fide* purchase before May 1, 1777, the day set for the departure of British merchants under the Statute Staple. This law was to be in effect until December 1, 1783.[49] It was ineffective in excluding creditors. Absentee merchants returned to Virginia in the summer of 1782 and applied for the oath, attesting their allegiance to the state. Ignorant or slightly "disaffected" justices often administered the oath, and when the refugee was called to account he presented his certificate of citizenship.[50]

The assembly of October, 1782, attempted to prevent the evasion of this law by passing a law prohibiting British merchants from entering the state; any magistrate who administered the oath to a British subject was to be punished.[51] Governor Harrison issued a proclamation in December

[48] Hening, *Statutes of Virginia,* X. 471.

[49] *Ibid.,* XI. 75.

[50] When Thomas Hyde was arrested and imprisoned in Suffolk he called for the oath of allegiance. *Calendar of Virginia State Papers,* III. 296.

[51] Hening, *Statutes of Virginia,* XI. 136.

forbidding persons who had professed loyalty to the British king to enter Virginia. Anyone violating this proclamation was to be arrested and taken to Richmond.[52] Commodore Barron, at Norfolk, was instructed to be especially watchful for refugees attempting to enter the state.[53] In order further to protect the Virginia debtors against those who threatened them with suits for British debts, it was provided that the plaintiff seeking to collect a debt must show in open court that the bond (if it were for a debt due a British merchant) was acquired by purchase before April 19, 1775. British subjects were excluded from the courts altogether. If the plaintiff failed to prove that he had acquired any British bond he attempted to collect prior to the date specified, he was to be fined treble costs. Lands, chattels, and commodities were to be accepted for domestic debts at prices fixed by a joint commission of the debtor and creditor.[54] Resolutions adopted by the assembly upheld the sequestration and sale of British property as legally justifiable and declared the attempts of the British government to have it restored by the terms of peace "are wholly inadmissable"; the peace commissioners of the

[52] Council Journals, 1782, pp. 38-39. *Calendar of Virginia State Papers,* III. 400.

[53] Council Journals, 1782, pp. 49-50.

[54] Hening, *Statutes of Virginia,* XI. 176.

United States, they thought, should not submit "that the laws made by any independent state of the union be subjected to the adjudication of any power or powers on earth."[55] Copies of these resolutions were sent to Congress, and the Virginia delegates were instructed to use their influence to have them sent to the American peace commissioners then negotiating in Paris.[56]

On February 15, 1783, the first news of the preliminary peace reached Norfolk; by the middle of March the terms were well diffused among the people.[57] The fourth article of the Peace of Paris provided that creditors on either side should meet with no lawful impediment to the recovery in full value in sterling money of all *bona fide* debts heretofore contracted; the fifth article obligated Congress to recommend to the states restoration of all estates, rights, and properties belonging to

[55] *Journal of the House of Delegates, October 1782,* p. 69.

[56] Jefferson attempted to have a provision inserted in the instructions to the American commissioners instructing them to urge "with perseverance the necessity of a reasonable forbearance in the levy of debts due within these states to British subjects," but this clause was stricken from the resolutions. Jefferson, *Writings,* III. 355, 360. Franklin upheld the cause of the American debtor in the negotiations; Adams said "he did not want to cheat anybody." Lord Shelburne was personally interested in the loyalists, having married into the Penn family. While peace negotiations were being conducted in Paris, the British creditors were pressing their claims at the British Court. Edmund Fitzmaurice, *Life of Lord Shelburne,* II. 127, 137, 193, 202.

[57] *Calendar of Virginia State Papers,* III. 436.

real British subjects which had been seized during the war; the sixth article provided that there should be no future confiscations.[58] The attitude of the Virginia debtors towards such terms can be easily imagined. Virginia felt that her interest had been neglected; her debts of over three millions sterling,[59] larger than the debts of all the other states combined, had been sacrificed for the New England fisheries.[60] In 1784, when John Tyler learned of Jefferson's appointment to follow Franklin as minister to France, he wrote to Jefferson that he could see no reason why he should go to Europe, "now that the Treaty had been made final. Your services might have been great indeed when the preliminaries were entered into, because Virginia would have had a friend who knew the circumstances of the people and how unjust it was to consent to the payment of the debts".[61]

[58] W. M. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers,* I. 586-90.

[59] Joseph Jones wrote Jefferson from Richmond December 29, 1783, that he believed at least £3,000,000 sterling and probably more were due to British subjects from Virginia. Jones did not think the people of Virginia were able to pay so large an amount and suggested that some arrangement should be made. Jefferson Papers, X.

[60] Jared Sparks, *Diplomatic Correspondence of the American Revolution,* X. 92, 93, 96.

[61] Tyler to Jefferson, May 20, 1784, in Jefferson Papers, X.

The treaty brought a burst of indignation from all parts of Virginia. Should, or should not, Virginia, an independent state, accept and execute a treaty whose terms were so unfavorable for her? Resolutions, petitions, speeches, and letters attempted to answer this question. A set of resolutions, adopted in Halifax County, appeared in the Virginia *Gazette* on June 7, 1783, opposing the treaty in general and especially the article providing for the "payment of debts contracted before the Revolution" as unprecedented and ruinous "to the suffering citizens of this state, who, we think are unable to comply with the demands, without producing great injury to the state itself. The debts of the British merchants are equally forfeited with their rights of property among us, and we can never consent that the good citizens of this state shall lay at the mercy of British creditors on account of such debts; neither do we think there is any authority in the laws to compel the payment of such debts to British subjects." The signers of the resolutions pledged themselves forever to oppose the treaty and called upon the Virginia assembly, then in session, to protect their interests.[62] On May 24 a vigorous article in the same paper made an appeal that the old distinction between Whig and Tory should not be for-

[62] *Virginia Gazette,* June 7, 1783.

gotten and that the people as a body oppose the extension of any civil privileges to the loyalists.[63] George Mason wrote to Patrick Henry that the question was frequently heard in conversation: "If we are now to pay the debts due to the British merchants what have we been fighting for all this while?"[64] Great alarm was expressed lest the state should assume the payment of the debts that had been discharged by payments into the loan office under the law of May, 1777, and the burden of the depreciated currency be thus placed on the tax payer if the treaty were executed. The people of Frederick[65] and Essex[66] Counties petitioned the assembly in May, 1783, that under no circumstances should the state assume responsibility for this class of debts. Inhabitants of Halifax expressed fear that these debts would be shifted to the taxpayers. A second petition from Halifax "prayed that the legislature may reject such part of the treaty as provides for the payment of debts."[67]

The Treaty of Paris obligated the state to repeal all laws which prevented the return of loyalists who had not borne arms against America; those

[63] *Virginia Gazette,* May 24, 1783.
[64] Henry, *Life of Patrick Henry,* II. 187.
[65] *Virginia Gazette,* December 27, 1783.
[66] Legislative Petitions, No. 865.
[67] *Journal of the House of Delegates, May 1783,* pp. 37, 65.

who had borne arms against the state should be allowed to return and remain undisturbed for a year to settle their affairs. This provision likewise caused bitter protest in Virginia. A petition from Essex County was presented to the House of Delegates on June 4 opposing the return of any British subjects;[68] a petition signed by three hundred inhabitants of Hanover was presented on June 7 objecting to the repeal of any laws which prohibited the return of the loyalists;[69] a similar petition from Henrico was presented June 11.[70]

However, there were some citizens who had bought up the bonds held against the Virginia debtors when the merchants left the state and, "by the transfer of these British debts, many citizens were supporting British interests to the injury of other citizens."[71] Others realized the importance of the loyalists and especially the loyal merchants to the Shelburne ministry and feared a renewal of the war if the treaty was not executed in Virginia.[72] In June, 1783, it was rumored in the state that loyalists in London

[68] *Ibid.*, p. 37.

[69] *Ibid.*, p. 41; *Virginia Gazette*, June 14, 1783.

[70] *Journal of the House of Delegates, May 1783*, p. 48.

[71] Hening, *Statutes of Virginia*, XI. 179.

[72] George Mason was of this opinion. See Rowland, *Life, Correspondence and Speeches of George Mason*, II. 45.

were insisting that New York should not be evacuated until Congress and the states acted upon the treaty stipulations respecting the restoration of property.[73] Others, among them John Tyler, thought that the treaty was a bad one, but Virginia should not "reflect too much on the business but provide the most easy means of getting over them [the debts] with honor."[74] In Essex County, where loyalism had manifested itself throughout the war, the contest was most bitter. Resolutions were adopted in that county in July supporting the treaty as honorably negotiated and calling upon Virginia faithfully to execute it.[75] An anonymous writer from Essex in the Virginia *Gazette* contended that a failure to pay the debts would only justify the assertion so commonly made in England—that the colonies revolted to keep from paying their just debts.[76] Citizens from Halifax instructed their delegates to "oppose to the utmost of their power the smallest infraction of the late treaty of peace," and if any objected to the cancellation of payments made into the loan office to discharge debts, they were to "call for the ayes and nays, so the corn could be

[73] *Virginia Gazette,* June 28, 1783.
[74] Tyler to Jefferson, May 20, 1784, in Jefferson Papers, X.
[75] *Virginia Gazette,* July 5, 1783.
[76] *Ibid.,* October 25, 1783.

separated from the tares."[77] At a meeting in Winchester, resolutions were adopted declaring that those who opposed British subjects entering the state were only attempting to avoid the payment of their debts; they thought debts ought to be paid and opposed a proclamation of the governor issued on July 2 prohibiting British subjects from migrating into Virginia.[78] Other citizens of Berkeley County thought the doors should be thrown open and that the British should be invited to come into the state; the great need of the country was man-power, and this need should not be sacrificed to the interest of the debtors.[79]

Closely akin to the subject of British debts was that of citizenship. The courts, as has been noted, were closed to British subjects, but there were always those who were ready to swear their allegiance to the state, if by doing so they could collect their accounts. Aliens could not hold title to real estate unless by special agreement; the British had attempted to include such an agreement in the Treaty of Paris, but with no success.[80] Merchants, unable to collect in sterling debts due them, must ultimately rely upon the real estate of the planters. Many merchants were anxious to

[77] *Ibid.*, June 7, 1783.
[78] *Ibid.*, December 27, 1783.
[79] *Ibid.*
[80] Such a provision was made in Jay's Treaty, Article IX.

return and resume their trade. Therefore, the question of citizenship was of great importance to the Virginians as well as to British subjects. This, with the question of sequestered property and debts, was the most widely discussed topic in the state from May to December, 1783.

Sixty-nine "of the most respectable inhabitants of Northumberland" expressed sympathy with those who had lost property under the acts of sequestration, but thought the "treaty should be interpreted with the utmost rigor," as it affected those mercantile classes who had left the state at the beginning of the war. They feared that if the British were not carefully watched they would undo all that had been accomplished by the Revolution.[81] At a meeting of the board of officers of the Virginia line in Fredericksburg on July 13, 1783, Colonel William Heth, of the Virginia Continental line, in a public speech, vigorously attacked the loyalists and called upon all true patriots to unite in preventing their return. The following day the same assembly unanimously adopted resolutions following the sentiment expressed by Colonel Heth.[82] "A number of respecable inhabitants of Caroline County" objected to the admission of those who had left the state in

[81] *South Carolina Gazette*, September 20, 1783.
[82] *Ibid.*, July 22, 1783.

the hour of distress. Citizenship was a privilege and should be granted only to the most deserving. They were likewise opposed to the payment of debts.[83] A writer in the *Gazette* for November 8 likened all the British merchants who wished to return and be admitted to citizenship to Judas—both were after the silver.[84] Meriwether Smith, at one time a member of Congress from Virginia, wrote a pamphlet against the return of the loyalists and scattered it over the state. In the spring of 1784 he prepared a second pamphlet against the returning British.[85] Several petitions were laid before the assembly in May, 1783, and an attempt was made to repeal the laws that were not in conformity with the treaty, but, as the assembly had received no official notification of the treaty, action was deferred until the next assembly.

In the meantime, the entire question of the treaty was laid before the governor and council. British

[83] *Ibid.*, October 15, 1783.

[84] *Virginia Gazette,* November 8, 1783—signed "A Sentinel from Caroline County."

[85] B. Randolph to J. Monroe, January 2, 1784, in *Letters to Monroe.* A writer from Tappahannock, Essex County, attacked Meriwether Smith's pamphlet—"Shall we allow a few scurvy sneaking debtors to come forward and verify the charge of our enemies"—that we went to war to escape our debts, see *Virginia Gazette,* November 29, 1783. On January 3, 1784, Smith made a reply. *Ibid.* He alleged he was not personally concerned. Smith, in his pamphlet of May, 1784, paralleled the confiscation of British debts with the conduct of the Dutch during the war with Spain. Edmund Randolph to Thomas Jefferson, April 24, 1784, in Jefferson Papers, X.

refugees had attempted to return, in compliance with the fourth and fifth articles of the treaty, and local authorities were uncertain whether the law of October, 1782, should be enforced against them. Captain John Wormley, who had been in British service during the war, was granted permission to remain in Virginia until further notice.[86] Three or four Scottish merchants made their appearance in Petersburg; the inhabitants of the town were so provoked that a meeting was held on June 20, and they were asked to leave.[87] On July 2 the governor laid before the council letters "received from Andrew Johnston and several other British subjects announcing their arrival in the state" for the purpose of "trade and collection of debts."[88] He asked the advice of the council. The council was at a loss as to the course that should be taken, but suggested that the British in the state be allowed twenty-one days to depart; the governor, the council advised, should issue a proclamation prohibiting anyone who had departed under the Statute Staple from returning, and the executive should seek the advice of the

[86] For the case of Wormley, see *Calendar of Virginia State Papers,* III. 483; *Council Journals,* 1782-83, pp. 8, 192, 202; Hening, *Statutes of Virginia,* XI. 314.

[87] Joseph Jones to James Madison, June 21, 1783, in P. L. Ford, *Letters of Joseph Jones,* p. 123.

[88] Council Journals, 1783, pp. 251, 256-7.

assembly.[89] The proclamation was issued,[90] but several returning merchants obtained permission from the governor and council to remain in the state. Joseph Williamson, who had been a merchant in Essex County, but joined the British and with several small boats made an attempt to burn Tappahannock during the war, obtained permission from the governor to carry a cargo of merchandise up the Rappahannock. He was warned by the citizens to leave, but took no heed. On October 10, 1782, despite the letter of protection from governor and council which Williamson had in his pocket, he was given a generous bath of tar and feathers. The governor and council ordered that indictments be brought against the offenders, but the citizens of Essex expressed their approval of the tar and feathers by electing to the next session of the assembly William Gatewood, whose name headed the list of the indicted.[91] Spencer Roane, the second member of the assembly from Essex, secured the passage of an act in the May session, 1784, squelching the indictment, as the mobbing had "taken place previous to the ratifi-

[89] *Ibid.*

[90] *Virginia Gazette,* July 5, 1783.

[91] Council Journals, 1782, p. 290. See Edmund Randolph to Thomas Jefferson, April 24, 1784, in Jefferson Papers, X.

cation of the Definitive Treaty by Great Britain."[92]

Governor Harrison laid the question of the return of the British before the assembly, when it met, November 1, 1783. "To allow all the British to return might be attended with the greatest inconvenience to the state and the American cause." Most of the British, he said, who had attempted to return, had borne arms against the state or had departed under the Statute Staple. If these merchants were allowed to return, they might have great influence "among the planters who are under heavy obligations to them—I am not uninformed that the proclamation has raised some clamors in the country but I am happy to find that they generally originated with those who have evermore inclined to bow to the yoke of slavery than to assist in the establishment of American Independence."[93] The letter was delivered to the house on November 4, and the next day a committee of fourteen, with John Taylor of Caroline as chairman, was ordered to prepare and bring in a bill "for repealing a former act, and declaring who shall be deemed citizens of this common-

[92] Hening, *Statutes of Virginia,* XI. 373.

[93] Governor's Letter Book, October 20, 1783. Also Executive Communications, 1782-1786.

wealth."[94] The report of the committee was discussed on November 10, and again, in the committee of the whole, on November 29.[95] John Tyler was opposed to permitting the British to return without making discrimination against those who had been most active in their loyalism. Patrick Henry thought that there was no danger from the British who would return; they had mistaken their interest. But, Henry argued, the war was over; the great need of the country was men to develop the untold wealth. "Shall we, who have laid the proud British lion at our feet, now be afraid of his

[94] *Journal of the House of Delegates, October 1783,* p. 9. Patrick Henry had introduced a bill in the May session of the assembly to repeal all laws against the migration of British subjects into Virginia. He was supported by Richard Henry Lee. Joseph Jones and John Tyler opposed Henry's bill and contended there should be some discrimination made among the British. The bill was debated in the house on May 21 and postponed, by a vote of fifty-six to twenty-seven, until the next session. Joseph Jones to James Madison, June 8, 1783, in Ford, *Letters of Joseph Jones,* p. 116. See also *Journal of House of Delegates, May 1783,* p. 76. George Mason, who thought that "the accounts of British creditors could be safely trusted to Virginia juries," proposed a bill to allow all British subjects to obtain judgments, but the judgments were to be executed in five annual installments. Violent opposition to Mason's bill was led by Richard Henry Lee. The bill was discussed in the committee of the whole on June 20 and postponed until the next session by a vote of sixty-six to twenty-three. See Rowland, *Life, Correspondence and Speeches of George Mason,* II. 45; Ford, *Letters of Joseph Jones,* pp. 110, 120; *Journal of the House of Delegates, May 1783,* p. 70. Patrick Henry was a supporter of immigration but opposed to the payment of the debts.

[95] *Journal of the House of Delegates, October 1783,* pp. 13, 39.

whelps!"[96] A compromise was reached on December 1, providing that former acts prohibiting British subjects from entering the state and acquiring citizenship should be repealed. A new citizenship law prohibited all persons resident in any of the states on April 19, 1775, and later joining the enemy, and all persons who acted with, or under the authority of, the Board of Refugees Commission in New York, from entering Virginia. All others who were resident in the state on April 19, 1775, and prohibited by any law from returning to the state, were given permission to immigrate, but they were denied all political rights.[97]

The liberal provisions of this law were poorly executed by the Virginians. The merchants who had gone to New York and Philadelphia during the war had been compelled to do guard duty; in some counties such persons were placed in the class of those who had joined the enemy, and they were refused admission.[98] The citizens of Port Royal, Caroline County, held a meeting in May, 1784, and ordered several merchants who had returned in accordance with the law of October,

[96] *Journal of the House of Delegates, October 1783,* p. 41; also Henry, *Life of Patrick Henry,* II. 193-95.

[97] Hening, *Statutes of Virginia,* XI. 323, 324. *Virginia Gazette,* December 27, 1783.

[98] *Calendar of Virginia State Papers,* III. 551.

1783, to depart at once.[99] In Portsmouth, at a meeting of the inhabitants on July 7, 1784, resolutions were adopted saying, "that it was with great astonishment that we see a number, and have reason to believe that a great many more will attempt settlement in this town." The inhabitants pledged themselves to invite the loyalists to depart, and if gentle "methods will not suffice we will take measures adopted against the British army to drive them out." Copies of these resolutions were sent to John Kerr and other returning merchants.[100] Thirty persons, most of them merchants, found difficulties when they attempted to return to Petersburg in September, 1784, and petitioned the governor for protection.[101] Regardless of the treaty of peace and the Virginia law, the temper of the people was so strong against loyalists, many of whom came to collect debts that could not be paid, that they were insulted and driven from the state. Governor Harrison issued a proclamation on July 26, 1784, calling upon all civil authorities to uphold the law and give protection to the returning merchants.[102]

The fourth article of the Treaty of Paris provided that even those who had borne arms against

[99] *Ibid.*, p. 598.
[100] *Ibid.*, p. 597.
[101] *Ibid.*, p. 613.
[102] *Virginia Gazette*, July 31, 1784.

the United States should be permitted to remain unmolested in the state for twelve months to secure their property. There was no such provision in the law of Virginia; but, as loyalists were prohibited from bringing suits in the courts, there seems to have been little objection to complying with the letter of the law. After the designated time had elapsed, a meeting was held in Petersburg at which eighty-four citizens from the surrounding counties were present. Joseph Jones and William Heth made a motion that, as it appeared that there were "sundry persons" residing in Petersburg who had overstayed the twelve months allowed, the governor and assembly should take measures to enforce the law of October, 1783, against them. John Banister moved that the wording be changed to read "if there were" people in the town contrary to the law, they should be ordered to depart; his amendment was adopted after some debate by a vote of forty-four to forty. The meeting was continued the next day (September 16), and a committee was appointed to draw up a petition to the governor and council requesting that the law be enforced against those persons who were illegally residing in the town.[103] Several letters were sent to Governor Patrick Henry asking that those who had over-stayed

[103] *Calendar of Virginia State Papers*, IV. 167, 171-72.

their time be arrested.[104] After consulting with the attorney-general,[105] the Governor issued a proclamation on October 14, 1786, ordering all British subjects who did not come within the provisions of the law of October, 1783, to depart at once upon pain of being arrested by the civil authorities. The assembly that met in October, 1786, provided that if anyone not authorized by former laws entered the state, he was to be arrested and tried; upon conviction, the offender was to be fined a hundred pounds and given a jail sentence of six months; for the second offence, the penalty was five years' imprisonment and forfeiture of all property. No foreign merchant could acquire any rights of citizenship until he had married in Virginia or acquired property of five hundred pounds. All persons who were prohibited from migrating into the state were forbidden to bring suit in any court against a citizen of Virginia or anyone entitled to become a citizen; if it should be shown in court that the plaintiff was prohibited from migrating into the state, he was to be fined treble costs, and the jury was to render a verdict for the defendant.[106]

A second phase of the debt problem was that relating to the opening of the courts to those

[104] *Ibid.*, pp. 167, 175.
[105] *Ibid.*, p. 179.
[106] Hening, *Statutes of Virginia*, XII. 261.

merchants who did not come within the class prohibited from entering the state. The fourth article of the Treaty of Paris provided that there should be no impediments to the recovery of debts. In May, 1783, as has been noted, George Mason proposed a bill that would permit British creditors to bring suits in Virginia courts, but this bill was postponed by a large vote until the next assembly.[107] All laws prohibiting the recovery of British debts were to expire on December 1, 1783. When the legislature met in November of that year, it continued the "stay law" "four months and from then until the next Assembly",[108] because "the Definitive Treaty had not received its finishing shape."[109]

Congress ratified the treaty of peace on January 14, and, in compliance with the obligation of the fifth article, resolutions were sent to each state recommending that they repeal the laws against the loyalists and the recovery of debts.[110] When the Virginia assembly met in May, 1784, James Madison proposed that all laws that stood in the way of the treaty should be repealed. Patrick Henry led the opposition to the repeal of the

[107] See above, note 94.

[108] Hening, *Statutes of Virginia,* XI. 349.

[109] Joseph Jones to Thomas Jefferson, December 29, 1783, Jefferson Papers, X.

[110] Sparks, *Diplomatic Correspondence of the American Revolution,* X. 228.

"stay law" and was successful in defeating a vote on Madison's bill by a vote of fifty-six to thirty-six.[111] Henry urged that Great Britain had not fulfilled that part of the treaty concerning the payment for the Negroes[112] carried away and the evacuation of the western posts. A committee appointed to draw up resolutions to Congress prepared a report asserting that although the treaty-making power was with Congress, they thought the "Assembly should withhold their coöperation in the complete fulfillment until British infractions of the treaty are reported upon;" as soon as the infractions on the part of Great Britain be rectified "and Congress judges it indispensably necessary, such acts of legislation passed during the war preventing the recovery of British debts should be repealed at a time and in a manner suitable with exhausted conditions of this commonwealth." An attempt to add an amendment that Virginia would not pay the debts until Great Britain paid for property destroyed was lost by a vote of fifty-five to thirty-three.[113] The resolutions were passed and sent to Congress, but the

[111] *Journal of the House of Delegates, October 1784,* p. 41; also Gaillard Hunt, *Writings of James Madison,* II. 54. Henry, *Life of Patrick Henry,* II. 231.

[112] Jefferson estimated that the British carried thirty thousand Negroes from Virginia.

[113] *Virginia Gazette,* June 29, 1784; *Journal of the House of Delegates, May 1784,* pp. 54, 72, 74.

minority of the senate drew up a second report dissenting from the majority resolutions.[114] Thus the assembly did nothing to comply with the recommendations of Congress and the Treaty of Paris except pass a law preventing any future confiscation of property.[115]

The same bill that was defeated in May, 1784, was introduced in the October session, 1784. Patrick Henry, who had led the opposition in May, had been elected governor and "was out of the way." While the bill was under discussion, the proceedings of a meeting of fifty-four Glasgow merchants interested in North American trade prior to 1776, held in Glasgow on September 24, were presented to the assembly through their American agents in Petersburg.[116] These merchants declared their willingness to accept payment for debts due them from Virginia in annual installments, if provision should be made for the execution of judgments in the courts.[117] Counter petitions were presented from thirty-nine local merchants of Petersburg and thirty-eight local merchants of Richmond, who thought no favor should be shown to their British creditors.[118] A

[114] *Virginia Gazette,* July 10, 1784.
[115] Hening, *Statutes of Virginia,* XI. 446.
[116] Executive Communications, October 1784-July 1785.
[117] *Ibid.*
[118] Madison, *Writings,* II. 114-17.

bill providing for the payment of debts in seven annual installments, without interest during the war, passed the house. The senate failed to agree to the bill and attempted to add a rider that would repeal all laws against the collection of domestic debts; the house would not agree to the rider, and the senate, probably to kill the bill, attempted to place all British subjects on the same legal footing. The house and senate, in a joint session, agreed upon a bill following closely that proposed by the house. The next day had been set by the assembly for adjournment. That night several of the members of the house "crossed the river to Manchester, with the intention, it is presumed of returning the next morning. The severity of the weather rendered their passage back the next morning impossible." There was no quorum in the house without them, and it was decided to postpone adjournment for another day. The next day a canoe was sent over for the party, "but they did not choose to venture themselves." The assembly agreed to wait one more day; the absent members in Manchester did not return; warm resolutions of censure were passed, and the assembly adjourned. The bill as agreed upon in the joint session did not go through the final form and never became a law. Patrick Henry wrote that the absent members were known

to favor the bill; Madison was inclined to think otherwise and said that their absence was only to defeat the measure.[119]

In the meantime, the failure of Virginia to repeal her laws against the collection of British debts had given rise to numerous complaints by British merchants, both in Virginia and in England.[120] J. H. Norton and Company, British merchants, wrote to James Madison and other members of the Virginia assembly on October 1, 1785, protesting that they were compelled to pay the debts owed to Virginians, but were unable, on account of existing laws in that state, to make collections of debts due to them. They asked Madison to give his aid in repealing the Virginia laws.[121] William Grayson wrote to Madison, November 22, 1785, that John Adams had conferred with Pitt, and the latter had complained of the laws in Virginia.[122] A committee of Glasgow merchants waited on Adams and told him that they proposed to lay the matter before Parliament, but Adams prevailed upon them not to do so, as it might prevent a more peaceable settle-

[119] Henry, *Life of Patrick Henry*, III. 266; Madison, *Writings*, II. 114.

[120] Bemis, *Jay's Treaty*, p. 103.

[121] J. H. Norton to James Madison, October 1, 1875, in Letters to Madison, Madison Papers, XIV.

[122] William Grayson to James Madison, November 22, 1785, in Letters to Madison, Madison Papers, XIV.

ment. Lord Carmarthen protested that the British merchants were losing much in Virginia by the migration of the Virginians to Kentucky.[123] The latter part of the year, Grayson wrote to Madison that the British ministry seemed to be satisfied with the execution of the Treaty of Paris in every state except Virginia. This information was laid before the House of Delegates when it assembled in October, 1785,[124] and the bill of the previous session was again revived. Several amendments added as riders killed the force of the bill; "insinuations were made against Congress, the Eastern States and the negotiators of the peace, particularly John Adams." The riders added by the house were so obnoxious to the supporters of the bill that it was allowed to die on the table.[125] The general cry was that the treaty ought not to be executed by Virginia until England had evacuated the posts and paid for the slaves.

Adams and Jefferson, in the spring of 1786, had a conference with Duncan Campbell, chairman of the Committee of American Merchants. Campbell admitted the justness of the contention that the planters were not able to make immediate

[123] *Ibid.*, November 1, 1785; May 22, 1786.

[124] After October, 1784, the Virginia assembly discontinued the meeting in May.

[125] Madison, *Writings*, II. 210-12, 206.

payments and agreed for the debts to be paid in five annual installments. Jefferson and Adams were unwilling to pay interest during the war; Campbell contended that "the renunciation of interest was a bitter pill that the merchants would not swallow." Several weeks after Jefferson returned to Paris, the merchants signified their willingness to forego the interest due for the seven years of war if the principal and other interest were paid.[126] This correspondence was laid before John Jay, secretary of Congress. Adams complained that Great Britain would not go further in making a commercial treaty until the states fulfilled their part of the Treaty of Paris. On October 13, 1786, Jay made a report to Congress on the execution of the treaty, sustaining in part the position of the British government.[127] Jay's report was acted upon, and resolutions were sent to the states on April 13 calling upon them to repeal all laws repugnant to the treaty.[128]

A bill for compliance with the congressional resolutions of March, 1787, was introduced into the Virginia assembly in October. Patrick Henry, who "did not think that the interest of Virginia could be trusted" with Congress, agi-

[126] Jefferson, *Writings,* IV. 210-12, 221-22.
[127] *Secret Journals of Congress,* IV. 186-7.
[128] Madison, *Writings,* II. 355, 341, 349.

tated for their defeat.[129] The bill was debated in the assembly for four days and defeated by a vote of seventy-five to forty-two. On December 12, a bill was passed[130] to repeal all laws that prohibited the recovery of British debts, but a subsequent bill, adopted by a vote of eighty to thirty-one,[131] provided that the law was not to go into effect until Congress notified Virginia that Great Britain had evacuated the posts and paid for the slaves.[132]

"I am persuaded that a large number of the citizens of the state are warmly opposed to the payment of British Debts," John Dawson wrote to Madison on April 15, 1787.[133] Alexander McCaul, agent for Kippen and Company, wrote to Jefferson from Glasgow on August 14, 1788, that out of the large number of "prominent Virginians" indebted to him, only three men had signified their willingness to pay.[134] In truth, the Virginia planters were bankrupt. In 1786-7 the clamor for paper money was renewed. Patrick

[129] James McClurg to James Madison, August 15, 1787, in Letters to Madison, Madison Papers, XV.

[130] Hening, *Statutes of Virginia,* XII. 528.

[131] *Journal of the House of Delegates, October 1787,* pp. 51, 52, 79-80.

[132] Hening, *Statutes of Virginia,* XII. 529.

[133] John Dawson to James Madison, April 15, 1787, in Letters to Madison, Madison Papers, XV.

[134] Alexander McCaul to Thomas Jefferson, August 14, 1788, in Jefferson Papers, XLII.

Henry converted Prince Edward County to the support of paper currency;[135] in the assembly he emphasized the great distress of the people and charged Congress with openly violating the interests of Virginia.[136] Albemarle County petitioned the assembly in 1787 for paper money that would be legal tender.[137] In Greenbriar County three hundred men signed an association to oppose the payment of taxes and pledged themselves to stop the proceedings of the next court.[138] The majority of the debtors in Virginia had neither the means nor the inclination to fulfill that part of the treaty which provided for the payment of debts.[139]

[135] James McClurg to James Madison, August 5, 1787, in Letters to Madison, Madison Papers, XV.

[136] Archibald Stuart to James Madison, November 9, 1787, in Letters to Madison, Madison Papers, XV.

[137] *William and Mary College Quarterly,* Series Two, II. 213-16.

[138] James McClurg to James Madison, August 22, 1787, in Letters to Madison, Madison Papers, XV.

[139] For an admirable treatment of the British debts in negotiations with Great Britain see Bemis, *Jay's Treaty,* especially ch. v.

CHAPTER V

THE TREATY OF PEACE AND THE CONSTITUTION

Did the treaty of 1783 supersede the laws of a state? Were laws in contravention of a treaty valid? "The question is one coming under the Treaty—the courts must decide upon it—It cannot be the wish of any American Whig, and I am sure it cannot be yours, that the legislature of any state should wrest a question of such high legal importance from the judicial department," J. F. Mercer of Maryland wrote to James Madison in commenting upon the laws passed in Virginia and Maryland to prevent the execution of the treaty.[1] The foregoing chapter has indicated the unwillingness of the legislature of Virginia to execute the Treaty of Paris. The fate of the treaty, however, was ultimately to be transferred from the legislative to the judicial department, and from the state to the federal government.

[1] J. F. Mercer to Madison, December 23, 1786. Letters to Madison, Madison Papers, XV. Madison accepted the position of Mercer as expressed in this letter and wrote to Edmund Pendleton of the Virginia court of appeals on January 21, 1791, that he thought the treaty repealed all laws that were in contravention to it. The action to repeal by the state legislature, Madison thought merely a matter of form. See Madison, *Writings,* VI. 22. In the case of Bayard *vs.* Singleton, the North Carolina courts declared a law of that state unconstitutional and void because it conflicted with the treaty of 1783. 1 *Martin,* 42.

In 1783 there were five grades of courts in Virginia. The county courts, a continuation of colonial institutions, had jurisdiction in civil cases not involving more than ten pounds; as the British debts were almost always for sums in excess of this amount, "few British debt cases, if any, came in these courts."[2] The Virginia constitution of 1776 provided that there should be a general court, an admiralty court, and a court of chancery.[3] These courts were established by an act of the assembly in 1777. The general court was a common law court; the admiralty court, as its name indicates, had maritime jurisdiction, and the chancery court was a court of equity.[4] The court of appeals, the highest court in the state, was added to the judicial system in 1778.[5] Justices for the county courts were appointed by the governor in council; the judges in the general, admiralty, and chancery courts were appointed by the assembly and held office during good behavior.[6] Judges from the last three courts presided over the Supreme Court of Appeals.

[2] James Monroe to Thomas Jefferson, May 1, 1792, Jefferson Papers, LXXIII.

[3] *Virginia Constitution of 1776,* Arts. 14, 15.

[4] Hening, *Statutes of Virginia,* IX. 389-429.

[5] *Ibid.,* p. 522.

[6] *Constitution of 1776,* Arts. 14, 15.

The first constitution of Virginia provided for complete separation of the three departments of government.[7] This separation of the three departments, however, was not observed. The courts were established by the legislative department; the salaries of the judges were fixed by the assembly, and, although the state constitution stipulated that these salaries should not be changed during the tenure of office, the legislature frequently fixed new schedules of pay.[8] The Virginia courts, notwithstanding the provision for independence in the state constitution, could scarcely be said to be independent of the legislative body. Loyalists who were convicted in the courts almost uniformly secured the intercession of the legislature in

[7] *Bill of Rights of 1776,* Art. 5.

[8] Hening, *Statutes of Virginia,* IX. 521; X. 278, 473. These changes were made on account of the continual depreciation of the currency. In 1788 the independence of the judiciary was further intruded upon by the legislature, when an act of assembly greatly increased the work of the admiralty and general courts and more than doubled the work of the chancery court. There was no provision for an increase in the judges' salaries. The courts protested, and a petition drawn up by the judges was sent to the assembly. The judges threatened to appeal to the people if the legislative department did not observe the complete separation of powers as provided for in the constitution of the state. Subsequent to this, the judges resigned their office, but they later requalified under an act of December 23, 1788. The legislative was the first of the three coördinate branches of the government to come to its own. The judicial department was established by the legislature and was partly at its mercy. See Daniel Call, *Report of Cases argued and adjudged in the Court of Appeals of Virginia,* (1833), IV. 135-51. Also 1 *Virginia,* 98-108.

their behalf.[9] It was the "opinion of the ablest counsel at the bar that these [British] debts were recoverable, and that no law prohibited it, and if it were otherwise the Treaty would control it—and several of the state judges entertain the same opinion—but the British merchants generally declined to bring suits prior to" the adoption of the federal Constitution; "for the motive to this conduct 'tis not necessary to hazard a conjecture."[10] Edmund Randolph, who had been attorney-general prior to his election as governor, thought the treaty paramount law, "or at least to be one of those laws which are, in my opinion, beyond repeal."[11] Had the judiciary of the state been independent, as provided in the constitution, what might have been the fate of the Virginia debtor in Virginia courts would be a matter of conjecture. The legislature, however, was supreme, and its temper against the payment of British debts was well known; the British creditor had small chance to recover property under the Virginia law in a Virginia court.

The position of the British creditor was somewhat changed by the adoption of the federal Constitution. The Constitution provided that the ju-

[9] *Journal of the House of Delegates, November 1782*, pp. 24, 33.
[10] James Monroe to Thomas Jefferson, May 1, 1792, Jefferson Papers, LXXIII.
[11] M. D. Conway, *Edmund Randolph*, p. 72.

dicial power of the federal government should extend to all cases arising under treaties made by the United States. It anticipated the transfer of British suits for debts and property from state to federal courts. This threat to debtors was the most objectionable part of the Constitution to Virginia. Edmund Randolph, a member of the Virginia assembly in 1787,[12] regarded the proposal to repeal all laws conflicting with the treaty of 1783 as a test of the strength of the constitutional party in the state. "A question is allotted for tomorrow by which it will be known how the party positively against the constitution stands as to numbers, a motion was postponed until that day for repealing the laws against the recovery of British debts. Much of the repugnance to this motion will be founded on the danger of every defendant being hurried sooner or later to the seat of the Federal Government. This is the most vulnerable and odious part of the constitution. I shall therefore conclude, if the acts be repealed, that the majority of the legislature may be said to have overcome the most objectionable points."[13] An exaggerated report in New Hampshire rumored "there were only two men in Virginia who were not in debt to be found among

[12] *Ibid.*, p. 96.
[13] *Ibid.*

the enemies of the Constitution."[14] On the other hand, the creditors to whom money was due from Virginia anxiously anticipated the adoption of the Constitution.[15]

The ratification of the federal Constitution was bitterly contested in Virginia. The proposed change in government involved more than a consideration of political theories for the Virginian. The proposed government transferred the claims over disputed debts and titles for contested lands from friendly local courts to new, and in many respects, foreign courts. "British debts and the Indiana claims are the principal topics of private discussion, and intrigue, as well as public declamation", Madison wrote to Washington from the Virginia ratifying convention.[16] In the struggle against ratification, Patrick Henry and George Mason attempted to wrest the natural support of the aristocratic tidewater section from the Constitution by indicating the great distress that would be brought to the planters when their British creditors summoned them before the federal courts. "If ever a suit be instituted", said Henry in debate on June 5, "by a British creditor for a

[14] C. A. Beard, *Economic Interpretation of the Constitution of the United States*, p. 318n.

[15] Alexander McCaul to Thomas Jefferson, August 14, 1788. Jefferson Papers, XLII.

[16] Madison, *Writings*, V. 179n.

sum, the defendant had better pay it than appeal to the Federal Supreme Court," where all the defendants would ultimately be carried.[17] Mason feared that under the new system there was grave danger that British interests would work themselves into the council of the state, "which might have pernicious consequence. The great houses of British merchants would spare no pains to insinuate the instruments of their views into the government."[18] Governor Randolph was aware of the economic ruin the British creditors would bring upon Virginia if they were permitted to collect debts in the state without restraint, but he thought a strong federal government could better protect the interest of the debtors from the creditors.[19] George Mason said that "he along with 30,000 other people interested in disputed lands" opposed the judiciary provision, fearing that Lord Fairfax would be able to recover, before a federal court, the lands which had been seized by the Virginia legislature.[20] John Marshall, ignorant of the rôle he was to play in the new government, expressed it as his opinion that any case Fairfax might bring would be decided in a Virginia court by a Virginia law "upon the

[17] Jonathan Elliot, *Debates on the Federal Constitution,* III. 543.
[18] *Ibid.*
[19] *Ibid.,* p. 74.
[20] *Ibid.,* pp. 528-29.

temper of our neighbors."[21] Randolph came to the assistance of the future chief justice, pleading that no person in the Northern Neck be influenced by the "assertions of Mr. Mason."[22] Seventeen amendments were proposed to the Constitution and, after endorsing these amendments, the constitutional party was able to muster a majority of ten votes for ratification. The fourteenth of the proposed amendments is significant. It provided in part, "that the judiciary power of the United States shall extend to no case where the cause of action shall have originated before the ratification of this constitution; except in disputes between states over territory; disputes between persons claiming lands under the grants of different states, and suits for debt due the United States."[23] The first Congress paid little or no attention to this proposed amendment; for Virginia, it came to an untimely end at the hands of a government controlled by the commercial class.

The ratification of the Constitution by the states brought fear to many a debtor in Virginia. St. George Tucker wrote to his stepsons, one of them John Randolph of Roanoke: "You will have heard that the constitution has been adopted by this

[21] Eliott. *Debates on the Federal Constitution,* III. 559.
[22] *Ibid.,* pp. 574-75.
[23] *Ibid.,* pp. 559-61.

state. That event my dear children, affects your interest more nearly than that of many others. The recovery of the British debts can no longer be postponed and there seems now to be moral certainty that your patrimony will all go to satisfy the unjust debts from your papa to the Hanburys. The consequence, my dear boys, must be obvious to you. Your sole dependence must be on your personal abilities and exertions."[24] Madison wrote to Jefferson soon after Virginia ratified the Constitution that "he anticipated no irregular opposition" to the new government, but "what local eruptions may be occasioned by ill-timed or rigorous execution of the Treaty of Peace against British Debts, I will not pretend to say."[25]

As soon as the new Constitution was adopted, British merchants hastened to bring their suits in the United States district and circuit courts of Virginia and in the Virginia state courts. John Jay, the chief justice, in opening the first federal court in New York on April 4, 1790, in his charge to the grand jury, emphasized the sanctity of treaties. Treaties, he said, were obligations upon nations; no state could alter these obligations or contracts. The Chief Justice repeated these reproaches to other delinquent states: to

[24] Conway, *Edmund Randolph,* p. 106.
[25] Madison, *Writings,* I. 405.

the grand jury of Connecticut, on April 22, in Massachusetts, on May 4, and in New Hampshire, on May 20.[26] There could be no doubt as to what the head of the highest court in the United States thought of the attempts of the states to violate treaties made by the central government. The docket of the circuit court in Virginia was crowded with suits brought by British creditors against their American debtors—cases that came under the treaty of 1783. In Order Book I of the United States Circuit court of Virginia, covering the period 1790 to 1795, three fourths of the cases listed involved contracts between British merchants and American debtors. Scarcely a British house trading in Virginia in 1775 is unrepresented. Two suits are listed against Thomas Jefferson, executor;[27] John Bowman, executor for Bowman and Spiers, British merchants, had seven suits against Virginia debtors on the docket;[28] Buchanan and Hastie, Cunningham and Company, Dobson and Dalteria, Donaldson and Company, Robert Donald, Jones and Farrell, Kippen and Company, all British merchants, filed suits for debts due from Virginians.[29] Osgood Hanbury's

[26] H. P. Johnston, *Correspondence and Public Papers of John Jay*, III. 387.

[27] Book I. 71. Virginia United States Circuit Court. (Richmond, Va.)

[28] *Ibid., passim.*

[29] *Ibid.*

estate entered suit to recover the debt due from the Randolph heirs.[30] The Virginia assembly, in its excitement over the probable outcome of these suits in the federal courts, attempted to pass resolutions in November, 1791, a week before the circuit court in Virginia was convened, protesting against the recovery of debts by British subjects until Great Britain had evacuated the western posts and paid for the Negroes carried away. The resolutions failed, however, and instead a set of resolutions, milder in tone, were sent to the Virginia Senators, urging Congress to come to the relief of the state. Congress did nothing.

The first of the British debt cases, Jones *vs.* Walker, was called on November 23, 1791, in the circuit court at Richmond. Jones represented the interests of Jones and Farrell of Bristol. This British company had brought suit against Dr. Thomas Walker, of Albemarle County, for £2151 which was alleged to be due them. Walker had paid the debt into the Virginia loan office on May 25, 1779, in accordance with the provisions of the Virginia law of 1777, and contended that the debt was discharged. The British house of Jones and Farrell had considerable interest at stake in the trial, for approximately £25,000 due to them had

[30] *Ibid.*, 94.

been paid into the Virginia loan office.[31] The company, therefore, engaged four able lawyers to argue their case in the circuit court. The debtors made common cause with the defendant and employed Patrick Henry, leading orator of Virginia, James Innis, the retiring attorney-general, John Marshall, a rising young attorney, and Alexander Campbell. Justices Johnson and Blair of the United States Supreme Court and Justice Griffin of the Virginia district court presided. The interest in the case was intense. Two hundred and seventy-two thousand pounds was involved in the decision of the court. The assembly was in session, but the Speaker was unable to maintain a quorum in the house while the case was being heard. The court room of the capitol was insufficient to accommodate the crowd, and the judges permitted the vacant seats of the bench and the windows behind it to be occupied. The proceedings were so conducted as to involve all the legal issues arising out of this class of debts. There was no jury trial; the court was first to determine upon the proceedings of the law. The plaintiff argued that debts due to individuals were not subject to confiscation in time of war, and, granted that they were, confiscation was an act that could be performed only by a sovereign state,

[31] Auditor's Day Books, 1778-1781, *passim*.

and Virginia was not sovereign until the recognition of independence by Great Britain. The laws of Virginia sequestering debts, therefore, were not valid, but only an acknowledgment of the existence of the debts. Granted, however, (which the plaintiff did not do) that the debts were confiscated and sequestered in a legal way, all such debts had been restored by the treaty of 1783. The Constitution of the United States declared treaties to be the law of the land. The treaty was binding on each party, and the contention that an infraction on the part of either relieved the other party was unsound. The question of the infraction of a treaty was one to be decided "by the supreme power of the nation only, and one of which this court could not, with any propriety, take cognizance."[32]

Patrick Henry entertained a crowded court room for three days in his reply for the defendants. He made the most of the assertion by the plaintiff lawyer, Ronald, that Virginia was not an independent state "before the monarch of that little island in the Atlantic gave his puny assent to it." The debts, Henry argued, were forfeited, and

[32] Ronald, Wickham, Starke, and Baker were employed by the plaintiffs. Ronald was a Scotchman, who had been exceedingly lukewarm in his loyalty to the American cause. He was looked upon as a Tory. Wickham was apparently absent from Virginia during the war. His name is among those who returned in 1782-83. See *Calendar of Virginia State Papers,* II. 204, 207, 277.

they could be recovered only by treaty. They could not be recovered, however, by the treaty of 1783, for this treaty had been broken by Great Britain when that nation refused to evacuate the western posts and pay for the Negroes carried away upon the evacuation of New York. Great Britain, having broken the treaty, could claim no benefits under it. Henry contended that the courts should have cognizance of this infraction of the treaty, for the Constitution had given the judiciary jurisdiction in all cases arising under treaties. Even if Great Britain had not broken the treaty of 1783, that treaty could not revive the class of debts at issue, for the treaty said *bona fide* debts; the debtor had paid the sum at issue into the loan office of Virginia under a law of Virginia and had thereby discharged the debt. It could no longer be called a *bona fide* debt.[33]

It was the general opinion "out of doors" that an infraction of the treaty by Great Britain relieved the Virginia debtor from obligations to pay, but the argument that the payment into the Virginia loan office was a discharge of the debt was not so readily accepted. The latter position was

[33] Jefferson thought that, in the case of Jones *vs.* Walker, Henry "really distinguished himself. He had exerted a degree of industry—and not only seemed but made himself truly learned on the subject." Jefferson, *Writings*, IX. 339. For the trial, see Henry, *Life of Patrick Henry*, II. 471-76; III. 601-48.

altogether too likely to involve the state in payments that would fall on all the taxpayers.[34] Judges Johnston and Griffin were in doubt;[35] Justice Blair was called home on account of the death of his son, and no decision was reached by the court. "The judges have decided nothing"—nothing has been done only a delay "of legislative matters for six days."[36] The forces of provincialism and agrarianism rallied in Virginia against federalism and commercialism.

Daniel L. Hylton, of the firm of D. L. Hylton and Company, Virginia merchants, debtors of Farrell and Jones, Osgood Hanbury, and Donaldson and Company, British merchants, wrote to Henry in March, 1792, and engaged him to defend suits entered in the Virginia circuit court. "Your countrymen look up to you as the rock of their salvation", he wrote Henry.[37] The argument begun in Jones *vs.* Walker in November, 1791, was continued in Ware, Admr. of Jones, *vs.* Hylton in the May term, 1793, of the Vir-

[34] Hardin Burnley to James Madison, December 3, 1791. Letters to Madison, Madison Papers, XVIII. Burnley was a returning merchant and was personally interested in the decision of the court.

[35] James Iredell to Samuel Johnston, May 29, 1793. Hayes Papers (Edenton, North Carolina).

[36] Francis Corbin to James Madison, January 7, 1792, Letters to Madison, Madison Papers, XVIII.

[37] Henry, *Life of Patrick Henry,* II. 473.

ginia circuit court.[38] Henry again spoke with eloquence to an attentive and interested audience.[39] John Jay and James Iredell from the United States Supreme Court and Judge Griffin of the district court of Virginia presided. Iredell admitted that he was swept from his feet by Henry's eloquence, yet "in the course of his argument he has not satisfied me in the slightest degree as to anything but the payments into the treasury." Neither Jay or Iredell thought the argument that the infraction of the treaty by Great Britain should bar recovery of the debts "seriously tenable".[40] The court ruled that the debts were obligatory upon the debtors, but Justice Iredell and District Judge Griffin held that the payments already made into the loan office under the law of Virginia were competent to bar the plaintiff from recovery of that part of the debt which had been paid to the state.[41] Chief Justice Jay dissented,[42] and the plaintiff took appeal to the United States Supreme Court from that part of the decision

[38] Book I, 141, 161, 381, 386. Virginia United States Circuit Court. (Richmond, Va.)

[39] M. C. Tyler, *Patrick Henry,* pp. 322-27.

[40] James Iredell to Samuel Johnston, May 29, 1793. Hayes Paper (Edenton, North Carolina).

[41] Daniel L. Hylton had paid £933 into the loan office on April 26, 1779, to discharge part of a debt due to Jones and Farrell. Auditor's Cash Book, 1779.

[42] Johnston, *Correspondence and Public Papers of John Jay,* III. 478, 485, 486.

which declared the payments into the loan office a legal discharge of the debt.

Chief Justice Jay's ability as a judge was not questioned, but his decision made him very unpopular in Virginia. Edmund Randolph, now attorney-general of the United States, wrote to President Washington from Virginia that it was reported the Chief Justice had been insulted by a drunken man who was present at the trial in the circuit court.[43] The Virginia assembly sent instructions to their senators to move in Congress that the fourth article of the treaty of 1783 (the article providing for the payment of debts) be suspended until the United States should have assurances that the treaty was being fulfilled by Great Britain. On May 6, 1794, Senator James Monroe asked permission to bring in such a bill. Monroe's fellow-senator, John Taylor of Caroline, the great exponent of agrarianism, ably supported Monroe. He indicated how the welfare of his state was being sacrificed to northern commercial interests. Sixteen senators voted against Monroe's motion; only Taylor and Monroe voted for it.[44]

That part of the decision of the Virginia circuit court which ruled that the debtors were no

[43] Conway, *Edmund Randolph,* p. 153.

[44] *Annals of Congress.* 3rd Congress, pp. 94, 95. See also King, *Life and Correspondence of Rufus King,* I. 524.

longer liable for the sums that had been paid into the state loan office under the laws of Virginia was reargued upon appeal in the United States Supreme Court in February, 1796. On March 19, the Supreme Court handed down a decision reversing the decision of the lower court.[45] The Supreme Court ruled that Virginia was a sovereign state in 1777 and capable of sequestering property, but the treaty of 1783, made by common consent, provided that there should be no legal impediment in collecting *bona fide* debts. The debts paid into the loan office were *bona fide,* and there was a legal impediment; to-wit, the Virginia law. Treaties of the United States were the law of the land; it was not stipulated in the treaty of 1783 that the states would repeal all laws preventing the recovery of debts; this was only to be recommended to the states. However, it was agreed that "certain things should not be permitted in the American Courts of Justice—these statutes should not be plead to bar recovery." The treaty, the Supreme Court held, nullified the laws of Virginia that were in contravention to it. Justice Chase gave the opinion, and Justices Cushing, Patterson, and Wilson concurred. Justice Iredell presented the opinion he had delivered in the circuit court of Virginia, in

[45] *Richmond and Manchester Advertiser*, March 27, 1796.

which he upheld again the position that Virginia was competent to pass such a law and that the defendant was living under that law and had acted in accordance with it. The debtor, he contended, discharged the debts under Virginia law and could no longer be held liable.[46]

This decision of the Supreme Court did not come as a surprise to the debtors. The *Richmond and Manchester Advertiser* made no comment in giving the opinion of the court; it was nothing more than Republican Virginia expected from the Federalists in control of the government. Such a ruling meant that the £272,000 that had been paid into the loan office to discharge debts must be paid again. Naturally, the debtors looked to Virginia for relief. Several petitions were presented to the assembly that met in November, 1796. Wilson Miles Cary[47] and Joseph Previt,[48] each of whom had made payments into the Virginia loan office, asked that the state come to their relief. November 22, a petition signed by Daniel L. Hylton and Company, Joseph Jones, Carter Page, and eleven other debtors to British merchants, who had made payments into the Virginia loan office totalling approximately forty-

[46] Ware, Admr. of Jones, *vs.* Hylton, 3 *Dallas* 175-225.
[47] *Journal of the House of Delegates, November 1796,* p. 70.
[48] *Ibid.,* p. 48.

four thousand pounds,[49] was presented to the House of Delegates. The petitioners requested that they be permitted to appear before the bar of the house and plead their case, as "all the payments into the Treasury of Virginia have been declared to be absolutely void by the Supreme Court of the United States."[50] The payments were discussed in the House of Delegates, and a set of resolutions was drafted in the committee of the whole directing the United States senators from Virginia to "use their best endeavors to obtain compensation for the citizens of this state who have been adjudged to be liable under the Treaty of Peace to pay debts which they did not owe when the Treaty was entered into".[51] Although the money in question had been used by Virginia to carry on the war, and properly belonged to that class of state debts assumed by the federal government, the central government gave the state no aid. On November 30, 1796, resolutions were introduced into the Virginia House of Delegates that money paid into the loan office during the war should be repaid, with interest, to the payees.[52] The resolutions passed the house on December 5 by a vote of one hun-

[49] Auditor's Cash Books, 1778-1781, *passim.*
[50] Legislative Petitions, No. 3611.
[51] *Ibid.*
[52] *Journal of the House of Delegates, November 1796,* p. 108.

dred and twenty-three to nine, and a committee was appointed to bring in a bill. The bill, containing the provisions of the resolutions of November 30 and making due allowance for depreciation, became law on December 13.[53] In accordance with this law, certificates were issued by Virginia to the debtors who had made the payments. The auditor was paying interest on these certificates in 1800.[54]

Following the adoption of the Constitution, the foreign creditors were successful in the Virginia state courts as well as the federal courts. In local courts, the debt cases were postponed as long as possible, awaiting, no doubt, rulings from higher courts. In April, 1791, the case of Mitchell *vs.* Wallis, entered in 1789, was called in the court at Fredericksburg. The laws of Virginia were pleaded to bar recovery of a British debt which came under the fourth article of the treaty of 1783. James Monroe, the attorney for the defendant, argued the Virginia law in vain; judgment was rendered for the plaintiff.[55] William B. Giles wrote to Jefferson, secretary of state, that prior to May, 1792, he had represented the British

[53] *Ibid.*, pp. 127, 160, 194.

[54] Shepherd, *Statutes at Large*, II. 18. See also Auditor's Books, 1797-1800, *passim.*

[55] William Giles to Thomas Jefferson, May 1, 1792. Jefferson Papers, LXXIII.

company of Robert Donald and Company "in at least one hundred cases in which the plaintiffs had received judgments in their favor.[56] The case of Page *vs.* Pendleton, involving the payment of a British debt into the Virginia loan office, was heard in chancery in May, 1793, two weeks before the case of Ware, Admr. of Jones, *vs.* Hylton was heard in the United States circuit court. Judge Wythe declared that a controversy in the courts of either country should be decided upon the same basis as a decision would be made in a neutral country. War, he ruled, did not extinguish debts, for Virginia had no jurisdiction over the British debtor or creditor. Debts could be extinguished only by payment. "The Treaty of Peace with Great Britain, if it be valid, abrogated the acts of every state in the union, tending to obstruct the recovery of British debts from the citizens of those states," and it is not within the jurisdiction of the court to take cognizance of the invalidity of the treaty. The great chancellor and teacher ruled that the payments into the loan office of Virginia did not discharge debts due to British subjects.[57] Judge Carrington, in the Virginia court of appeals, did not think that the creditor

[56] William Giles to Thomas Jefferson, May 1, 1792. Jefferson Papers, LXXIII.

[57] Wythe, *Chancery Reports* (Edition 1853), pp. 211-18. Page *vs.* Pendleton. Judge Wythe had paid a small sum into the loan office on August 7, 1779. See Auditor's Day Book, 1779, p. 20.

being "a British subject should have anything to do with the question."[58] Judge Pendleton, in the same court, declared that, independently of the treaty, the British creditors should be allowed nothing, but "the Treaty is the law of the land and must be obeyed."[59]

Despite these decisions in the state and federal courts, debtors attempted by one means or another to avoid or postpone the payments due to British merchants, but the judiciary was not coerced. The debtors first attempted to prevent the establishment of debt by exhibiting bonds; they would have the court go behind the bond. The Virginia court ruled in the case of Glen and Peter *vs.* Cocke, in 1794, that bonds were sufficient evidence of debts.[60] Again the debtors attempted to bar recovery of debts by pleading statutes of limitation. The Virginia courts refused to allow the time previous to 1783 to be added to the time subsequent to that date to bar recovery.[61] The only concession that the debtor secured from the Virginia courts was the disallowance by the courts of

[58] McCall *vs.* Turner, 1 *Call,* 133-46. Judge Carrington had made the first payment into the loan office (£324), in 1778 under the law sequestering debts.

[59] *Ibid.* Edmund Pendleton "Collector" paid £449 into the loan office on November 9, 1778. Auditor's Day Book, 1778, p. 137.

[60] 1 *Washington* 333.

[61] 2 *Washington* 279-81.

interest on debts during the period of the war.[62] Subsequent to the adoption of the Constitution, the interest of the the British creditor was safe in both state and federal courts.

The payment of the debts could no longer be postponed. The old Virginia aristocracy of colonial days was forced to pay the claims that had been accumulating for generations. Usually the planter saved the cost of litigation and settled with his creditor out of court. It was customary for the British merchants to claim no interest for the period during the war, where accounts were settled without recourse to the courts.[63] The settlement of long standing debts brought distress to the colonial aristocracy; some borrowed heavily in France and remained on their old plantations to struggle with poverty, but many sold what they possessed, paid what debts they could, and moved across the Appalachians to rebuild their fortunes.

In the meantime, the relations between the United States and Great Britain were placed on a new footing by Jay's Treaty. This treaty, which was to settle outstanding difficulties between the two nations, said nothing of the slaves that had been carried away by the British at the end of the American Revolution. It did provide for the

[62] 2 *Call* 530. See also Hopkins *vs.* Bell, 3 *Cranch* 640-42.

[63] Rowland, *Life and Correspondence of George Mason*, II. 352.

surrender of the posts in the Northwest, but this was no great concession to Virginia and southern agrarianism, since their interest lay farther to the south. Jay's Treaty gave to British subjects the privilege of possessing property in the United States, a right that had been denied by Virginia. Such a provision greatly aided the British creditors in the settlement of accounts against American debtors. And, finally, despite the amazing success of the creditors in American courts following the ratification of the Constitution, the claims of British subjects against American citizens were removed from the judiciary and placed in the hands of a joint commission for settlement. The American citizen who had claims against British citizens did not have recourse to this commission until he had exhausted the channels of the British courts.[64] This provision for the removal of a question of such high legal importance from the American judiciary is the more appalling, when it is recalled that the American negotiator was Chief Justice of the Supreme Court of the United States.

Jay's Treaty provided that a joint commission should be appointed, two members by the United States, two members by Great Britain, and a fifth member selected by the appointed commissioners,

[64] Bemis, *Jay's Treaty, passim.*

to hear claims arising under the treaty of 1783. The commissioners selected the fifth member by lot, and the choice fell upon the British nominee, giving the British a majority on the commission. The British insisted that interest should be paid for the period during the war upon the debts owed British subjects; the Americans dissented. The British likewise urged the restoration of the estates of loyalists confiscated by bills of attainder; again the Americans refused to agree. After considerable discussion, the Americans withdrew from the commission, and the negotiations were stopped. The agrarian class secured control of the government in 1801. The dispute with Great Britain over the debts was compromised by the Convention of 1802. In this convention, the United States agreed to pay six hundred thousand sterling to the British government as a settlement for all outstanding claims. This amount was duly paid in three annual installments from the treasury of the United States.[65]

[65] *American State Papers, Foreign*, II. 382-486. See also Bemis, *Jay's Treaty*, p. 318.

CONCLUSION

In the foregoing pages several phases of the Revolution in Virginia have been followed in detail and , as a result of the investigation, a recapitulation may be made. In the first place, it should be emphasized that the American Revolution in Virginia did not have the support of the merchant factors trading in the colony. The merchants in Virginia were loyalists. Virginia was an agrarian colony. The primitive agricultural methods of the seventeenth and eighteenth centuries exhausted the soil, and the future of the colony depended upon a continual opening of virgin lands. The merchant looked to the sea, back to the Old World—his prosperity was bound inseparably with navigation laws; the planter looked to the west, forward to the New World—his fortune was buried deep in the new and fertile lands on the outer fringe of civilization. The British government, seeking to check the French advance in the Mississippi Valley, had permitted and encouraged migration across the mountains prior to 1763. But, with the expulsion of the French from North America and the growth of the Indian problem until it became continental in

scope, British policy in the West was radically changed. A new government directly under the control of the crown was set up in the Mississippi Valley, and the territory beyond the Appalachians was taken from the colonies, which claimed it under charters, and was temporarily closed to settlement. This new land policy barred Virginians from the undeveloped country. English-bred planters became American patriots; agrarianism in the South joined hands with commercialism in the North to throw off the British yoke. For Virginia, the Revolution was in part a war of agrarian conquest; the British land system was broken down; territory to the west was brought again under the control of Virginia, and virgin lands were opened to settlement. So unanimous was the support of the Revolution by the agricultural class in Virginia that scarcely a loyalist was to be found among the planters.

Again, it should be noted that the agrarian class, especially the planters in Virginia, was hopelessly in debt to British merchants and to their agents in the colony. For this class, the war had its advantages. Virginia, as the other colonies, began the war with an empty treasury and with no established credit. The raising of necessary revenues was a problem that well might puzzle the most astute financier; custom duties were impos-

sible; direct taxes were certain to be unpopular and might defeat the very object of the Revolution. The agrarian solution was recourse to large issues of paper money, followed by the sequestration and sale of property belonging to alien enemies to support the issues. The indebted planter was permitted by Virginia law to discharge his debt to the enemy merchant by paying the sum due into the treasury of the state in depreciated paper money. The benefits of this policy to the state were small, but in it were great possibilities for the planters.

Agrarian and commercial interests that had united in a common cause in 1776 realized that their interests were not always in harmony when America came to make peace with England. The fruits that agricultural Virginia hoped to reap from the war of conquest were only partially realized. The treaty of peace obligated Great Britain to surrender the coveted Mississippi Valley, but already Virginia had ceded this territory to the central government to preserve unity among the states. Virginia was not represented at Paris during the peace negotiations, nor did any active member of the American delegation represent the agrarian South, while the commercial interests were strongly represented in Adams, Jay, and Franklin. Anticipating future commercial rela-

tions, the treaty of 1783 required American debtors to pay debts due prior to the war and placed moral obligations upon the states to restore loyalist property. Virginia was indignant, and, so long as the execution of the treaty depended upon the states, nothing was done to fulfill its provisions. The agrarian class, in part, opposed the creation of a central government that would have absolute control of international relations; it fought the adoption of the Constitution on the ground that the new government, controlled by the commercial class, would enforce those provisions in the treaty of 1783 which were unpopular in the agricultural sections.

And, finally, the ratification of the Constitution and the execution of the treaty of 1783, coming contemporary with the new financial policies, brought the agrarian and commercial classes face to face. The courts of the United States forced the planters to make the long deferred settlements with the British merchants. Many of the bankrupt aristocrats moved into the promising West, carrying with them a dislike and distrust of Federalism. The unencumbered yeomanry came rapidly to the fore in Virginia, and that state, which had been the stronghold of aristocracy, became the bulwark of Republicanism.

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